

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 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 §§351.805, 351.821, 351.823, 351.825, 351.827

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §351.805, concerning State Medicaid Managed Care Advisory Committee; §351.821, concerning Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning e-Health Advisory Committee; §351.825, concerning Texas Brain Injury Advisory Council; and §351.827, concerning Palliative Care Interdisciplinary Advisory Council.

##### BACKGROUND AND PURPOSE

The proposal is necessary to align the rules with statute and Executive Order No. GA-55 issued January 31, 2025.

The proposal also replaces citations to Texas Government Code §531.012 with §523.0201 and §523.0203 in §§351.805, 351.821, 351.823, and 351.825 to comply with House Bill 4611, 88th Legislature, Regular Session, 2023. House Bill 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 new Texas Government Code sections became effective April 1, 2025.

Additionally, the proposal amends §351.823 to extend the e-Health Advisory Committee (e-HAC) abolition date from December 31, 2025, to December 31, 2027. HHSC conducted an internal evaluation of e-HAC, including review of implementation of its recommendations to the agency, public and committee member participation at open meetings, and committee input to the agency regarding policy development and legislative implementation. In alignment with HHSC's strategic goals and objectives, HHSC proposes extending the committee for two years.

The proposal also includes edits that align the rules with the current HHSC advisory committee rule template.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.805 revises language to align the rule with statute and Executive Order No. GA-55 issued January 31, 2025. The amendment also includes edits to align the rule with the current HHSC advisory committee rule template.

The proposed amendment to §351.821 updates citations to Texas Government Code and revises language to align the rule with statute and Executive Order No. GA-55 issued January 31, 2025. The amendment also includes edits to align the rule with the current HHSC advisory committee rule template.

The proposed amendment to §351.823 updates citations to Texas Government Code and revises language to align the rule with statute and Executive Order No. GA-55 issued January 31, 2025, and extends the abolition date of the e-Health Advisory Committee to December 31, 2027. The amendment also includes edits to align the rule with the current HHSC advisory committee rule template.

The proposed amendment to §351.825 updates citations to Texas Government Code and revises the language to align the rule with statute and Executive Order No. GA-55 issued January 31, 2025. The amendment also includes edits to align the rule with the current HHSC advisory committee rule template.

The proposed amendment to §351.827 updates citations to Texas Government Code and revises the language to align the rule with statute and Executive Order No. GA-55 issued January 31, 2025. The amendment also includes edits to align the rule with the current HHSC advisory committee rule template.

##### FISCAL NOTE

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

##### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand and repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the rules align with statute and Executive Order No. GA-55 issued January 31, 2025 and accurately cites the laws governing HHSC, Medicaid, and other social services. Also, the extension of the e-Health Advisory Committee will benefit the public as the committee will continue to advise Health and Human Services.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 25R024" in the subject line.

#### STATUTORY AUTHORITY

The amendments are authorized by 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, and Texas Government Code §523.0201 and §523.0203, which authorizes the executive commissioner to establish advisory committees by rule.

The amendments affect Texas Government Code §524.0151, §523.0201, and §523.0203.

#### §351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. The State Medicaid Managed Care Advisory Committee (SMMCAC) is established under Texas Government Code §523.0201 and §523.0203. The SMMCAC is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The SMMCAC advises the [Texas Health and Human Services Commission (HHSC)] executive commissioner and the health and human services system (HHS) on the statewide operation of Medicaid managed care, including:

- (1) program design and benefits;
- (2) systemic concerns from consumers and providers;
- (3) efficiency and quality of services;
- (4) contract requirements;
- (5) provider network adequacy;
- (6) trends in claims processing; and
- (7) other issues as requested by the [HHSC] executive commissioner.

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

- (1) makes recommendations to HHSC;
- (2) advises HHSC on Medicaid managed care issues;
- (3) disseminates Medicaid managed care best practice information as appropriate;
- (4) adopts bylaws to guide the operation of the SMMCAC;
- (5) performs other tasks consistent with its purpose.

and

(d) Reporting requirements.

(1) Report to the [HHSC] executive commissioner. No later than December 31st of each year, the SMMCAC files an annual written report with the [HHSC] executive commissioner covering the meetings and activities in the immediately preceding fiscal year. The report includes:

- (A) a list of the meeting dates;
- (B) the members' attendance records;
- (C) a brief description of actions taken by the SMMCAC;

(D) a description of how the SMMCAC accomplished its tasks;

(E) a summary of the status of any recommendations that the SMMCAC made to HHSC;

(F) a description of activities the SMMCAC anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

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

(2) Report to the Texas Legislature. By December 31st of each even-numbered year, the SMMCAC files a written report with the Texas Legislature of any policy recommendations made to the [HHSC] executive commissioner.

(e) Meetings.

(1) Open meetings. The SMMCAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(2) Frequency. The SMMCAC will meet quarterly.

(3) Quorum. Thirteen members constitute a quorum.

(f) Membership.

(1) The SMMCAC is composed of no more than 24 members appointed by the [HHSC] executive commissioner. In selecting members to serve on the SMMCAC, HHSC [:]

[(A)] considers the applicant's qualifications, background, [and] interest in serving,[] and

[(B)] [~~tries to choose committee members who represent the diversity of all Texans, including ethnicity, gender, and~~] geographic location.

(2) The SMMCAC consists of representatives of the following categories:

(A) ten people who are enrolled in Medicaid managed care or represent a person enrolled in Medicaid managed care and who are appointed from one or more of the following subcategories:

(i) a person who has low-income, a family member of the person, or an advocate representing people with low-income;

(ii) a person with an intellectual, a developmental, or a physical disability, including a person with autism spectrum disorder, or a family member of the person, or an advocate representing people with an intellectual, a developmental, or a physical disability, including persons with autism spectrum disorder;

(iii) a person using mental health services, a family member of the person, or an advocate representing people who use mental health services;

(iv) a person using non-emergency medical transportation services, a family member of the person, or an advocate representing persons using non-emergency medical transportation;

(v) a person who is dually enrolled in Medicaid and Medicare, a family member of the person, or an advocate representing persons who are dually enrolled in Medicaid and Medicare;

(vi) a family member of a child who is a Medicaid recipient or an advocate representing children who are Medicaid recipients, except for a child with special health care needs listed in clause (vii) of this subparagraph;

(vii) a family member of a child with special health care needs or an advocate representing children with special health care needs;

(viii) a person who is 18 years of age or older who will transition or has transitioned from a child and adolescent managed care program to an adult managed care program, a guardian of the person, or an advocate representing persons transitioning from a child and

adolescent managed care program to an adult managed care program; or

(ix) a person who is 65 years of age or older, the person's family member, or an advocate representing persons who are 65 years of age or older;

(B) ten providers contracted with Texas Medicaid managed care organizations, appointed from one or more of the following subcategories:

(i) rural providers;

(ii) hospitals;

(iii) primary care providers;

(iv) pediatric health care providers;

(v) dentists;

(vi) obstetrical care providers;

(vii) providers serving people dually enrolled in Medicaid and Medicare;

(viii) providers serving people who are 21 years of age or older and have a disability;

(ix) non-physician mental health providers;

(x) long-term services and supports providers, including nursing facility providers and direct service workers; or

(xi) an organization, association, corporation that is representative of and located in, or in close proximity to, a community where it serves or conducts outreach for:

(I) people enrolled in Medicaid;

(II) children from families that are low-income;

(III) children with special health care needs;

(IV) people with disabilities;

(V) people 65 years of age or older; or

(VI) people needing perinatal care; and

(C) four managed care organizations participating in Texas Medicaid, including:

(i) national plans;

(ii) community-based plans; and

(iii) dental maintenance organizations (for the purpose of this section).

(3) HHSC appoints members for staggered terms so that terms of an equal or almost equal number of members expire on August 31st 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 [HHSC] 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 SMMCAC selects a chair and vice chair of the committee from among its members.

(1) The chair serves until December 1st of each even-numbered year. The vice chair serves until December 1st 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, which will be provided by HHSC, on relevant statutes and rules, including:

(1) this section;

(2) §351.801 of this division;

(3) Texas Government Code Chapter 523, Subchapter E [~~§523.0201~~];

(4) Texas Government Code Chapters 551, 552, and 2110;

(5) the HHS Ethics Policy;

(6) the Advisory Committee Member Code of Conduct; and

(7) other relevant HHS policies.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, HHSC may reimburse a SMMCAC member for his or her travel to and from SMMCAC meetings only if:

(1) funds are appropriated and available; and

(2) the member:

(A) receives Medicaid services or is a family member of a client that receives Medicaid services; and

(B) submits the request for travel reimbursement in accordance with the HHSC Travel Policy.

(j) Date of abolition. The SMMCAC is abolished, and this section expires, on December 31, 2028.

*§351.821. Value-Based Payment and Quality Improvement Advisory Committee.*

(a) Statutory authority. The Value-Based Payment and Quality Improvement Advisory Committee (VBPQIAC) is established under Texas Government Code §523.0201 and §523.0203. The VBPQIAC [~~§531.042 and~~] is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The VBPQIAC advises the executive commissioner [~~Texas Health and Human Services (HHSC) Executive Commissioner~~] and Health and Human Services system agencies (HHS agencies) on quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

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

(1) studies and makes recommendations regarding:

(A) value-based payment and quality improvement initiatives to promote better care, better outcomes, and lower costs for publicly funded health care services;

(B) core metrics and a data analytics framework to support value-based purchasing and quality improvement in Medicaid and CHIP;

(C) HHSC and managed care organization incentive and disincentive programs based on value; and

(D) the strategic direction for Medicaid and CHIP value-based programs; and

(2) adopts bylaws to guide the operation of the committee; and

(3) pursues other deliverables consistent with its purpose to improve quality and efficiency in state health care services as requested by the executive commissioner [~~HHSC Executive Commissioner~~] or adopted into the work plan or bylaws of the committee.

(d) Reporting Requirements.

(1) No later than December 31st of each year, the VBPQIAC files an annual written report with the executive commissioner [~~HHSC Executive Commissioner~~] covering the meetings and activities in the immediately preceding year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of the actions taken by the VBPQIAC;

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

(E) a description of the activities the VBPQIAC anticipates undertaking in the next year;

(F) recommended amendments to this section; and

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

(2) No later than December 1st of each even-numbered year, the VBPQIAC submits a written report to the executive commissioner [~~HHSC Executive Commissioner~~] and Texas Legislature that:

(A) describes current trends and identifies best practices in health care for value-based payment and quality improvement; and

(B) provides recommendations consistent with the purposes of the VBPQIAC.

(e) Meetings.

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

(2) Frequency. The VBPQIAC will meet at least twice each year.

(3) Quorum. A majority of members constitutes a quorum for the purpose of transacting official business. [~~(To calculate a majority for a committee with an even number of members, divide the membership by two and add one; for a committee with an odd number of members, divide the membership by two and round up to the next whole number.)~~]

(f) Membership.

(1) The VBPQIAC is composed of 19 voting members and up to four non-voting ex officio members appointed by the executive commissioner [~~HHSC Executive Commissioner~~]. In selecting members to serve on the VBPQIAC, HHSC considers the applicants' qualifications, background, [~~and~~] interest in serving, and geographic location.

(A) The 19 voting members represent the following categories:

(i) Medicaid managed care organizations;

(ii) hospitals;

- (iii) physicians;
- (iv) nurses;
- (v) pharmacies;
- (vi) providers of long-term services and supports;
- (vii) academic systems; and
- (viii) other disciplines or organizations with expertise in health care finance, delivery, or quality improvement.

(B) Four non-voting, ex officio members may be appointed to the VBPQIAC as determined by the executive commissioner [HHSC Executive Commissioner].

{(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.}

(2) [(3)] 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 [HHSC Executive Commissioner] will appoint a person to serve the unexpired portion of that term.

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

(C) This subsection does not apply to ex officio members, who serve at the pleasure of the executive commissioner [HHSC Executive Commissioner] and do not have the authority to vote on items before the full committee.

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

(1) The chair serves until December 31 of each odd-numbered year. The vice chair serves until December 31 of each even-numbered year.

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

{(3) A member is not eligible to serve in the role of chair or vice chair once another person has been appointed to fill the member's position on the VBPQIAC.}

(h) Required Training. Each member must complete training on relevant statutes and rules, including this section, §351.801 of this division, Texas Government Code Chapter 523, Subchapter E [§531.012], 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. Unless permitted by the current General Appropriations Act, members of the VBPQIAC are not paid to participate in the VBPQIAC nor reimbursed for travel to and from meetings.

(j) Date of abolition. The VBPQIAC is abolished and this section expires on December 31, 2027.

§351.823. *e-Health Advisory Committee.*

(a) Statutory authority. The e-Health Advisory Committee (committee) is established under Texas Government Code §523.0201

and §523.0203. The committee [§531.012 and] is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The committee advises the executive commissioner [Texas Health and Human Services Commission (HHSC) Executive Commissioner] and Health and Human Services system agencies (HHS agencies) on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services.

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

(1) advises HHS agencies on the development, implementation, and long-range plans for health care information technology and health information exchange, including the use of electronic health records, computerized clinical support systems, health information exchange systems for exchanging clinical and other types of health information, and other methods of incorporating health information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care and population health;

(2) advises HHS agencies on incentives for increasing health care provider adoption and usage of an electronic health record and health information exchange systems;

(3) advises HHS agencies on the development, use, and long-range plans for telemedicine, telehealth, and home telemonitoring services, including consultations, reimbursements, and new benefits for inclusion in Medicaid telemedicine, telehealth, and home telemonitoring programs;

(4) makes recommendations to HHS agencies through regularly scheduled meetings and verbal or written recommendations communicated to HHSC staff assigned to the committee;

(5) performs other tasks consistent with its purpose as requested by the executive commissioner [Executive Commissioner]; and

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

(d) Reporting Requirements.

(1) By [No later than] December 1 of each even-numbered year, the committee files a written report with the executive commissioner [HHSC Executive Commissioner] and the Texas Legislature covering the meetings and activities not covered in its most recent report filed with the executive commissioner [HHSC Executive Commissioner] and Texas Legislature through September 30 of the even-numbered year the report is due to be filed. The report includes:

- (A) a list of the meeting dates;
- (B) the members' attendance records;
- (C) a brief description of actions taken by the committee;
- (D) a description of how the committee accomplished its tasks;
- (E) a summary of the status of any rules that the committee recommended to HHSC;
- (F) a description of activities the committee anticipates undertaking in the next fiscal year;
- (G) recommended amendments to this section;
- (H) any policy recommendations; and

(I) 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.

(2) By ~~[No later than]~~ December 1 of each odd-numbered year, the committee submits to the executive commissioner ~~[HHSC Executive Commissioner]~~ an informational briefing memorandum describing the committee's costs, accomplishments, and areas of focus that covers October 1 of the preceding year through September 30 of the odd-numbered year the informational briefing memorandum is due to be filed.

(e) Meetings.

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

(2) Frequency. The committee will meet at least three times a year at the call of the presiding officer.

(3) Quorum. A majority of members constitutes a quorum.

(f) Membership.

(1) The committee is composed of no more than 24 members appointed by the executive commissioner ~~[HHSC Executive Commissioner]~~. In selecting voting members to serve on the committee, HHSC considers the applicants' qualifications, background, ~~[and]~~ interest in serving, and geographic location.

(2) The committee includes representatives of HHS agencies, other state agencies, and other health and human services stakeholders concerned with the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services. The committee comprises the following voting and non-voting ex officio members:

(A) Voting members representing the following categories:

(i) at least one representative from the Texas Medical Board;

(ii) at least one representative from the Texas Board of Nursing;

(iii) at least one representative from the Texas State Board of Pharmacy;

(iv) at least one representative from the Statewide Health Coordinating Council;

(v) at least one representative of a managed care organization;

(vi) at least one representative of the pharmaceutical industry;

(vii) at least one representative of a health science center in Texas;

(viii) at least one expert on telemedicine;

(ix) at least one expert on home telemonitoring services;

(x) at least one representative of consumers of health services provided through telemedicine;

(xi) at least one Medicaid provider or child health plan program provider;

(xii) at least one representative from the Texas Health Services Authority established under Texas Health and Safety Code Chapter 182;

(xiii) at least one representative of a local or regional health information exchange; and

(xiv) at least one representative with expertise related to the implementation of electronic health records, computerized clinical support systems, and health information exchange systems for exchanging clinical and other types of health information.

(B) At least three non-voting ~~[Non-voting]~~ ex officio members representing the following categories:

(i) at least two non-voting ex officio representatives from HHSC; and

(ii) at least one non-voting ex officio representative from the Texas Department of State Health Services.

(3) When appointing members, the executive commissioner ~~[HHSC Executive Commissioner]~~ considers the ~~[cultural, ethnic, and]~~ geographic diversity of Texas, including representation from at least 6 of the 11 Public Health Regions as defined by the Texas Department of State Health Services in accordance with Texas Health and Safety Code §121.007.

(4) Members are appointed for staggered terms so that the terms of half of the members expire on December 31 ~~[31st]~~ of each year. Regardless of the term limit, a member serves until the member's replacement has been appointed. This ensures sufficient, appropriate representation.

(A) If a vacancy occurs, the executive commissioner ~~[HHSC Executive Commissioner]~~ appoints 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 two years. A member may apply to serve one additional ~~[and be appointed for a second]~~ two-year term ~~[, which may be served consecutively or nonconsecutively].~~

(C) This subsection ~~[section]~~ does not apply to non-voting ex officio members, who serve at the pleasure of the executive commissioner and do not have the authority to vote on items before the full committee ~~[HHSC Executive Commissioner]~~.

(g) Officers. The committee selects a chair and vice chair from among its members ~~[the presiding officer and an assistant presiding officer]~~.

(1) The chair ~~[presiding officer]~~ serves until July 1st of each even-numbered year. The vice-chair ~~[assistant presiding officer]~~ serves until July 1 of each odd-numbered year.

(2) A member may serve up to two consecutive terms as chair ~~[presiding officer]~~ or vice-chair ~~[assistant presiding officer]~~.

~~[(3) A member whose term has expired is not eligible to serve in the officer role of chair or vice chair once another person has been appointed to fill the member's position on the committee.]~~

(h) Required Training. Each member must complete training on relevant statutes and rules, including this section; §351.801 of this subchapter; Texas Government Code Chapter 523, Subchapter E ~~[§531.042]~~; 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. Unless permitted by the current General Appropriations Act, members of the committee are not paid to participate in the committee nor reimbursed for travel to and from meetings.

(j) Date of abolition. The committee is abolished and this section expires on December 31, 2027 [2025].

*§351.825. Texas Brain Injury Advisory Council.*

(a) Statutory authority. The Texas Brain Injury Advisory Council (TBIAC) is established under Texas Government Code §523.0201 and §523.0203. The TBIAC [§531.012 and] is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The TBIAC advises the executive commissioner [Texas Health and Human Services Commission (HHSC) Executive Commissioner] and the Health and Human Services system on strategic planning, policy, rules, and services related to the prevention of brain injury; rehabilitation; and the provision of long-term services and supports for persons who have survived brain injuries to improve their quality of life and ability to function independently in the home and community.

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

(1) informs state leadership of the needs of persons who have survived a brain injury and their families regarding rehabilitation and the provision of long-term services and supports to improve health and functioning that leads to achieving maximum independence in home and community living and participation;

(2) encourages research into the causes and effects of brain injuries as well as promising and best practice approaches for prevention, early intervention, treatment and care of brain injuries and the provision of long-term services and supports;

(3) recommends policies that facilitate the implementation of the most current promising and evidence-based practices for the care, rehabilitation, and the provision of long-term services and supports to persons who have survived a brain injury;

(4) promotes brain injury awareness, education, and implementation of health promotion and prevention strategies across Texas;

(5) facilitates the development of partnerships among diverse public and private provider and consumer stakeholder groups to develop and implement sustainable service and support strategies that meet the complex needs of persons who have survived a brain injury and those experiencing co-occurring conditions; and

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

(d) Reporting requirements.

(1) Reporting to the executive commissioner [HHSC Executive Commissioner]. By November 1 of each year, the TBIAC files an annual written report with the executive commissioner [HHSC Executive Commissioner] covering the meetings and activities in the immediately preceding fiscal year and reports any recommendations to the executive commissioner [HHSC Executive Commissioner] at a meeting of the Texas Health and Human Services Commission Executive Council. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the TBIAC;

(D) a description of how the TBIAC accomplished its tasks;

(E) a description of activities the TBIAC anticipates undertaking in the next fiscal year;

(F) recommendations made by the TBIAC, if any;

(G) recommended amendments to this section; and

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

(2) Reporting to Texas Legislature. The TBIAC shall submit a written report to the Texas Legislature of any policy recommendations made to the executive commissioner [HHSC Executive Commissioner] by December 1 of each even-numbered year.

(e) Meetings.

(1) Open Meetings. The TBIAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(2) Frequency. The TBIAC will meet quarterly.

(3) Quorum. Eight members constitute a quorum.

(f) Membership.

(1) The TBIAC is composed of 15 members appointed by the executive commissioner [HHSC Executive Commissioner] representing the categories below. In selecting members to serve on the TBIAC, HHSC considers the applicants' qualifications, background, geographic location, and interest in serving.

(A) One representative from acute hospital trauma units.

(B) One representative from post-acute rehabilitation facilities.

(C) One representative of a long-term care facility that serves persons who have survived a brain injury.

(D) One healthcare practitioner or service provider who has specialized training or interest in the prevention of brain injuries or the care, treatment, and rehabilitation of persons who have survived a brain injury.

(E) One representative of an institution of higher education engaged in research that impacts persons who have survived a brain injury.

(F) Five persons who have survived a brain injury representing [diverse ethnic or cultural groups and] geographic regions of Texas, with:

(i) at least one of these being a transition age youth (age 18-26);

(ii) at least one of these being a person who has survived a traumatic brain injury; and

(iii) at least one of these being a person who has survived a non-traumatic brain injury.

(G) Four family members actively involved in the care of loved ones who have sustained a brain injury, with:

(i) at least one of these being a person whose loved one has survived a traumatic brain injury; and

(ii) at least one of these being a person whose loved one has survived a non-traumatic brain injury.

(H) One representative from the stroke committee of the Governor's Emergency Medical Services (EMS) & Trauma Advisory Council or other stakeholder group with a focus on stroke.

(2) Members are appointed for staggered terms so that the terms of five, or almost five, 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 [~~HHSC 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 TBIAC selects a chair and vice chair of the TBIAC from among its members. The chair or the vice chair must be a person who has survived a brain injury or a family member actively involved in the care of a loved one who has survived a brain injury.

(1) The chair serves until December 31 of each even-numbered year. The vice chair serves until December 31 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 Chapter 523, Subchapter E; [~~§531.042;~~] 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 TBIAC 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 TBIAC is abolished and this section expires on July 1, 2028, in compliance with Texas Government Code §2110.008(b).

*§351.827. Palliative Care Interdisciplinary Advisory Council.*

(a) Statutory authority. The Palliative Care Interdisciplinary Advisory Council (Council) is established in accordance with Texas Health and Safety Code Chapter 118.

(b) Purpose. The Council assesses the availability of patient-centered and family- focused, interdisciplinary team-based palliative care in Texas for patients and families facing serious illness. The Council works to ensure that relevant, comprehensive, and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. This includes information and education about complex symptom management, care planning, and coordination needed to address the physical, emotional, social, and spiritual suffering associated with serious illness.

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

(1) consults with and advises HHSC on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Texas Health and Safety Code §118.011;

(2) studies and makes recommendations to remove barriers to appropriate palliative care services for patients and families facing serious illness in Texas of any age and at any stage of illness; [~~and~~]

(3) pursues other deliverables consistent with its purpose as requested by the executive commissioner [~~Executive Commissioner~~] or adopted into the work plan or bylaws of the council; [~~and~~ .]

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

(d) Reporting requirements.

(1) Reporting to executive commissioner [~~Executive Commissioner~~]. By December 31 of each year, the Council files a written report with the executive commissioner [~~Executive Commissioner~~] that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

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

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

(E) a summary of the status of any rules that the committee recommended to HHSC;

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

(G) recommended amendments to this section; and

(H) 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.

(2) Reporting to executive commissioner [~~Executive Commissioner~~] and Texas Legislature. By October 1 of each even-numbered year, the Council submits a written report to the executive commissioner [~~Executive Commissioner~~] and the standing committees of the Texas senate and house with primary jurisdiction over health matters. The report:

(A) assesses the availability of palliative care in Texas for patients in the early stages of serious disease;

(B) analyzes barriers to greater access to palliative care;

(C) analyzes policies, practices, and protocols in Texas concerning patients' rights related to palliative care, including:

(i) whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician or practitioner;

(ii) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining treatment or advance directives decisions; and

(iii) the practices and protocols on informed consent and disclosure requirements for palliative care services; and

(D) provides recommendations consistent with the purposes of the Council.

(e) Open meetings. The Council complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(f) Membership.



(1) The Council is composed of at least 15 voting members appointed by the executive commissioner [~~Executive Commissioner~~] and nonvoting agency, ex officio representatives as determined by the executive commissioner [~~Executive Commissioner~~]. Total membership on the Council will not exceed 24.

(2) Voting membership.

(A) The Council must include:

(i) at least five physician members, including:

(I) two who are board certified in hospice and palliative care; and

(II) one who is board certified in pain management;

(ii) three palliative care practitioner members, including:

(I) two advanced practice registered nurses who are board-certified in hospice and palliative care; and

(II) one physician assistant who has experience providing palliative care;

(iii) four health care professional members, including:

(I) a nurse;

(II) a social worker;

(III) a pharmacist; and

(IV) a spiritual-care professional; and

(iv) at least three members:

(I) with experience as an advocate for patients and the patients' family caregivers;

(II) who are independent of a hospital or other health care facility; and

(III) at least one of whom represents an established patient advocacy organization.

(B) Health care professional members listed in subparagraph (A)(iii) of this paragraph must meet one or more of the following qualifications:

(i) experience providing palliative care to pediatric, youth, or adult populations;

(ii) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(iii) expertise in interdisciplinary palliative care.

(C) In selecting voting members, the executive commissioner [~~Executive Commissioner~~] considers [~~ethnic and minority representation and~~] geographic representation.

(D) Members are appointed to staggered terms so that the terms of approximately one-quarter of the members' terms expire on December 31 of each year.

(E) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Council selects from its members a presiding officer and an assistant presiding officer.

[(+)] The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year.

[(2)] The presiding officer and the assistant presiding officer remain in their positions until the Council selects a successor; however, the individual may not remain in office past the individual's membership term.]

(h) Required Training. Each member shall complete all training on relevant statutes and rules, including this section and §351.801 of this division [subchapter] (relating to Authority and General Provisions); Texas Health and Safety Code Chapter 118; [and Texas Government Code §531.012; and] Texas Government Code Chapters 551, 552, and 2110; the HHS Ethics Policy; the Advisory Committee Member Code of Conduct; and other relevant HHS policies. HHSC will provide the training.

(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) [(i)] Date of abolition [Abolition:] The Council is required by statute and will continue as long as the state law that requires it remains in effect.

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 May 21, 2025.

TRD-202501742

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 32. HEARING AND APPEAL PROCEDURES

##### 4 TAC §32.3

The Texas Animal Health Commission (Commission) proposes amendments to §32.3, concerning Appeal of Other Orders and Decisions in the Texas Administrative Code, Title 4, Part 2, Chapter 32.

##### BACKGROUND AND PURPOSE

Section 32.3 sets forth procedures for appeals of various orders and decisions of the Commission. The Commission proposes amendments to this section to remove language referencing appeals of orders and decisions concerning the CWD Herd Certification Program. A repeal of the CWD Herd Certification Program found in Chapter 40, concerning Chronic Wasting Disease, is filed concurrently with the proposed amendments to §32.3.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §32.3 will eliminate references to the CWD Herd Certification Program, adjust numbering, and add "relating to" statements for clarification.

#### FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the proposed amended rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed amended rules. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments and do not have foreseeable implications relating to costs or revenues of state governments.

#### PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed amended rules are in effect, the anticipated public benefits will provide Texas agencies more flexibility in administering CWD rules without the restrictions imposed by federal program standards. Additionally, the proposed amended rules are anticipated to alleviate some redundancy in agency oversight of CWD.

#### TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed amendments to Chapter 32 would be in effect, the proposed rules:

Will not eliminate a government program;

Will not require the creation or elimination of employee positions;

Will result in no assumed change in future legislative appropriations;

Will not affect fees paid to the Commission;

Will not create new regulation;

Will not expand existing regulations;

Will reduce the number of individuals subject to the rule; and

Will not affect the state's economy.

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

The Commission determined that the proposed amendments to Chapter 32 will not pose an adverse economic impact on animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the Commission determined that participants enrolled in the CWD Herd Certification Program are not able to exercise the intended benefits of the program and the federal guidelines that must be followed because of Texas' participation in the program are far more restrictive than originally thought. Along with the repeal of the CWD Herd Certification Program found in Chapter 40, concerning Chronic Wasting Disease, the proposed amendments to §32.3 help to alleviate adverse economic impacts associated with the strict federal guideline requirements.

#### COST TO REGULATED PERSONS

The proposed amendments do not impose additional costs on regulated persons and are designed to alleviate restrictions from federal guidelines and allow more flexibility in how Texas agencies respond to CWD. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

#### REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule Chapter 32, Hearing and Appeal Procedures" in the subject line.

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Pursuant to §161.038 of the Texas Agriculture Code, titled "Administrative Procedure Act Applicable," the Commission is subject to the administrative procedure law set forth in Chapter 2001 of the Texas Government Code.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the Commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.148 of the Texas Agriculture Code, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates a statute, rule, or order

of the Commission. Section 161.148 outlines the procedure for appeal from such notice of violation.

No other statutes, articles, or codes are affected by this proposal.

*§32.3. Appeal of Other Orders and Decisions.*

(a) For appeals of orders and decisions of the executive director concerning brucellosis see §35.2(l) and §35.2(p) of this title (relating to General Requirements).

~~[(b) For appeals of orders and decisions of the executive director concerning CWD Herd Certification Program see §40.3(h) of this title.]~~

(b) ~~[(e)]~~ For appeals of orders and decisions of the executive director concerning fever ticks see §41.8(3) and §41.11 of this title (relating to Dipping, Treatment, and Vaccination of Animals and relating to Protest of designation of area or premise).

(c) ~~[(d)]~~ For appeals of orders and decisions of the executive director concerning tuberculosis see §43.2(k) of this title (relating to General Requirements).

(d) ~~[(e)]~~ For appeals of orders and decisions of the executive director concerning authorized personnel see §47.7 of this title (relating to Procedure for Suspension or Revocation).

(e) ~~[(f)]~~ For appeals of orders and decisions of the executive director concerning piroplasmiasis see §49.6(g) of this title (relating to Piroplasmiasis: Area or County Test).

(f) ~~[(g)]~~ For appeals of executive declarations of high risk disease movement restriction zones see §59.11(g) of this title (relating to Executive Declaration of a High Risk Disease Movement Restriction Zone).

(g) ~~[(h)]~~ For appeals of all other orders and decisions of the executive director not enumerated above, the following procedure applies:

(1) A person receiving a written order or decision from the commission or executive director must file a notice of appeal no later than 15 days from receipt of the decision. The notice of appeal must be filed in writing with the executive director at the commission's office in Austin. The notice of appeal must attach copy of the order or decision being appealed and specifically state the issues for consideration on appeal.

(2) If a timely request is made, the commission shall determine if a contested hearing is authorized under the relevant statutory provisions and rules. If so, the commission shall refer the matter to SOAH for a hearing.

(3) After the conclusion of the hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the issues appealed in accordance with §2001.062 of Texas Government Code and SOAH rules.

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 May 23, 2025.

TRD-202501816

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 839-0511

◆ ◆ ◆  
CHAPTER 40. CHRONIC WASTING DISEASE

The Texas Animal Health Commission proposes changes to Chapter 40 of the Texas Administrative Code, including amendments to §§40.1, 40.2, 40.5, and 40.7; and the repeal of §40.3 and §40.6.

BACKGROUND AND PURPOSE

Chronic Wasting Disease (CWD) is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-anter material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The CWD Herd Certification Program (HCP) is a voluntary, cooperative surveillance and certification program between the Commission, United States Department of Agriculture, herd owners, and other affected parties. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years, to receive a certified status. Certified herd status permits interstate animal movement to some states. Participating in HCP is not required to keep CWD susceptible species captive in Texas or to buy, sell, or transfer animals within Texas.

The United States Department of Agriculture publishes Chronic Wasting Disease Program Standards ("federal standards") to clarify and update acceptable methods for complying with the legal requirements in Title 9 of the Code of Federal Regulations Parts 55 and 81.

Federal standards not only specify the minimum requirements for participants to achieve certified status but require participating states to maintain state-wide standards for CWD diagnostic testing, epidemiological traces, and herd plans that must be enforced against all CWD susceptible animals. To be an approved state, Texas is required to follow the requirements of the federal standards.

Because of Texas's participation in HCP, Commission regulations were adopted to meet the requirements of federal standards. Current rules require Commission staff to perform five-year epidemiological traces for every confirmed case of CWD in a captive herd. Under current rules, movement is restricted by a hold order or quarantine order during the epidemiological investigations of the trace until TAHC can determine the extent of the herd's exposure to CWD and how to limit additional spread. To remove the quarantine from a positive facility or clear an epidemiological trace, a herd must enter a herd plan that meets the requirements of federal standards and commonly involves depopulation followed by a five-year quarantine.

Participation in this program has decreased significantly. In 2021, approximately 375 herds were enrolled in the program. Presently, there are 79 enrolled herds in good standing.

The Commission received feedback from herd managers and owners that the requirements for CWD quarantines and herd plans are overly restrictive, negatively impact land values, and cause unrecoverable losses to business operations.

The Commission finds that the repeal of the program would allow the Commission to amend current rules to eliminate the burdens caused by HCP.

Along with the repeal of the HCP program, the Commission proposes amendments that will eliminate the requirement that the Commission herd plans and epidemiological traces be set at a minimum of 5 years. The proposed rule amendments are designed to allow epidemiological staff to assess a herd on a case-by-case basis.

#### SECTION-BY-SECTION SUMMARY

The proposed amendments to §40.1 eliminate the definitions for APHIS, Certified Herd, Farmed or Captive Cervids, High-risk Area or County, and TAHC Authorized Veterinarian; modify the definitions for Commingled, Commingling, CWD-Exposed Animal, CWD-Suspect Herd, CWD-Trace Herd, Herd Plan, and Official CWD Test; adjusts numbering; and make minor grammatical changes.

The proposed amendments to §40.2, concerning General Requirements, change the procedures for issuing hold orders and quarantine, making hold orders and quarantines optional rather than mandatory. The amendments also remove references to USDA and eliminate the federal standards for dispositions of CWD positive and trace herds.

The proposed repeal of §40.3 will eliminate the rules regulating HCP.

The proposed amendments to §40.5, concerning Surveillance and Movement Requirements for Exotic CWD Susceptible Species, reduces the surveillance testing requirement from 100% of mortalities to three valid tests each year.

The proposed repeal of §40.6 will eliminate the established containment and surveillance zones and remove the regulations regarding movement restriction zones.

The proposed amendments to §40.7, concerning Executive Director Declaration of CWD Movement Restriction Zone, update language for consistency within the rule.

#### FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the proposed repeal and amended rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the repeal and proposed amendments rules. Ms. Coggeshall also determined for the same period that there will be an approximate loss of \$10,000 annually in fee revenue because the Commission will no longer conduct veterinary inspections as part of the program. The Commission collects a fee of \$100 per hour for agency staff to perform inspections at the request of a participant to recover costs of personnel time to conduct the inspections. The loss of fee revenue will not impact the operations of the Commission.

#### PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed repeal and amended rules are in effect, the anticipated public benefits will provide Texas agencies with more

flexibility in addressing CWD without the restrictions imposed by federal program standards.

#### TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed repeal and amendments would be in effect, the proposed rules:

Will eliminate a government program;

Will not require the creation or elimination of employee positions;

Will result in no assumed change in future legislative appropriations;

Will affect fees paid to the Commission;

Will not create new regulation;

Will not expand existing regulations;

Will reduce the number of individuals subject to the rule; and

Will not affect the state's economy.

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

The Commission determined that the proposed repeal and amendments to Chapter 40 will not pose an adverse economic impact on animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the Commission determined that participants enrolled are not able to exercise the intended benefits of the program and the federal guidelines that must be followed as part of Texas' participation in the program are far more restrictive than originally thought. As a result, the proposed repeal and

amendments may help to alleviate adverse economic impacts associated with the strict federal standards.

#### COST TO REGULATED PERSONS

The proposed repeal and amendments do not impose additional costs on regulated persons and are designed to alleviate restrictions from federal guidelines and allow more flexibility in how Texas agencies respond to CWD. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

#### REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

#### 4 TAC §§40.1, 40.2, 40.5, 40.7

##### STATUTORY AUTHORITY

The amendments within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code:

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic

fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmis-

sion of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in §161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

#### §40.1. Definitions.

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

[(1) APHIS--The Animal and Plant Health Inspection Service of the United States Department of Agriculture.]

(1) [(2)] Approved Laboratory--A diagnostic laboratory approved by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Administrator to conduct official tests for CWD in accordance with 9 CFR §55.8.

(2) [(3)] Certified CWD Postmortem Sample Collector--An individual who has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for postmortem CWD testing, and who has been certified by the commission to perform these activities.

[(4) Certified Herd--A herd that has reached certified status in the CWD Herd Certification Program in §40.3 of this chapter (relating to CWD Herd Certification Program) or an equivalent state or federal program authorized under 9 CFR Part 55.]

(3) [(5)] Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy of susceptible species. Clinical signs include, but are not limited to, loss of body condition, loss of appetite, incoordination, blank stares, tremors, listlessness, excessive salivation, difficulty swallowing, increased drinking and urination, depression, and other behavioral changes and eventual death.

(4) [(6)] Commingled, Commingling--Cervids of any age are commingled when they have direct physical contact with each other, have less than 10 feet of physical separation, or share equipment, pens or stalls, pasture, or water sources/watershed, including contact with bodily fluids or excrement from other [farmed or captive] cervids (i.e., indirect contact). [Animals are considered to have commingled if they have had such direct or indirect contact with a CWD-positive animal or CWD contaminated premises within the last five years.]

(5) [(7)] Commission--The Texas Animal Health Commission (TAHC).

(6) [(8)] CWD-Exposed Animal--A CWD susceptible species that is part of a CWD-positive herd[.] or was determined through an epidemiological investigation to have been exposed to or [that has been] commingled with [or been exposed to] a CWD-positive animal [or resided on a CWD contaminated premises within five years of the discovery of CWD].

(7) [(9)] CWD-Positive Animal--An animal that has had a diagnosis of CWD established through official confirmatory testing conducted by the National Veterinary Services Laboratories.

(8) [(10)] CWD-Positive Herd--A herd in which a CWD-positive animal resided at the time of CWD diagnosis.

(9) [(11)] CWD Susceptible Species--All species in the Cervidae family that have had a CWD diagnosis confirmed by an official test conducted by an approved laboratory. Including but not limited to white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus columbianus*), North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids.

(10) [(12)] CWD-Suspect Animal--A CWD susceptible species with unofficial CWD test results, laboratory evidence or clinical signs that suggest a diagnosis of CWD, as determined by a commission representative, but for which official laboratory results are inconclusive or not yet conducted.

(11) [(13)] CWD-Suspect Herd--A CWD susceptible species herd with a CWD-suspect animal. [A herd with unofficial CWD test results, laboratory evidence, or clinical signs that suggest a diagnosis of CWD, as determined by a commission representative, but for which official laboratory results are inconclusive or not yet conducted.]

(12) [(14)] CWD-Trace Herd--A CWD susceptible species herd that has been epidemiologically determined to have been exposed to a CWD-positive animal. [The term includes trace-back, trace-forward, and otherwise epidemiologically linked herds. A trace-back herd is any herd that contributed an animal to a CWD-positive herd within the five years prior to the diagnosis of CWD in the positive herd or is otherwise epidemiologically linked to a CWD-positive herd. A trace-forward herd is any herd which has received animals from a CWD-pos-

itive herd during a five-year period prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd or is otherwise epidemiologically linked to a CWD-positive herd.]

(13) [(45)] Executive Director--The executive director [Executive Director] of the Texas Animal Health Commission.

[(16) Farmed or Captive Cervids--Privately or publicly maintained or held cervids for economic or other purposes within a perimeter fence or confined area, or captured from a free-ranging population for interstate or intrastate movement and release.]

(14) [(17)] Herd--A group of cervids that is under common ownership, control, or supervision and is grouped on one or more parts of any single premises or on two or more geographically separated premises where cervids are commingled or have direct or indirect contact with one another.

(15) [(18)] Herd Plan--A written herd or premises management agreement developed by the commission, the herd owner, and other affected parties[; A herd plan sets forth the steps to take] to control the spread of CWD [from a CWD-positive herd, to control the risk of CWD in a CWD-exposed herd or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd].

[(19) High-risk area or county--An area or county that is epidemiologically determined to have a high probability for species susceptible for having, developing or being exposed to CWD.]

(16) [(20)] Hold Order--A written commission order and action restricting movement of a herd, animal, or animal product pending the determination of CWD status.

(17) [(21)] Location Identification Number (LID)--A nationally unique number assigned by the commission to a premises starting with the state postal abbreviation (TX) followed by six random alphanumeric characters. Each LID is a geographically distinct location associated with a verifiable physical address, geospatial coordinates, or other location descriptors.

(18) [(22)] Official Animal Identification--A device or means of animal identification approved by USDA to uniquely identify individual animals. The official animal identification must include a nationally unique animal identification number that adheres to one of the following numbering systems:

(A) National Uniform Eartagging System (NUES);

(B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) or Location Identification Number (LID) in conjunction with a livestock production numbering system; or

(D) Any other numbering system approved by the commission for the identification of animals in commerce.

(19) [(23)] Official CWD Test--A USDA-validated immunohistochemistry (IHC) test or Enzyme-Linked Immunosorbent Assay (ELISA) test of appropriate tissue samples for the diagnosis of CWD conducted in an approved laboratory.

(20) [(24)] Postmortem tissue samples--Means the obex, both medial retropharyngeal lymph nodes, and an official animal identification device attached to ear or skin tissue collected and prepared under USDA [APHIS] guidelines for CWD postmortem sample collection.

(21) [(25)] Premises Identification Number (PIN)--A nationally unique number assigned by the commission or USDA to a premises. Each PIN is a geographically distinct location associated

with a verifiable physical address, geospatial coordinate, or other location descriptors.

(22) [(26)] Quarantine--A written commission order and action of restricting animal or animal product movement from or onto a premises because of the existence of or exposure to CWD.

[(27) TAHC Authorized Veterinarian--A veterinarian who is licensed to practice medicine in Texas, Category II accredited by USDA APHIS VS, and has satisfactorily completed TAHC disease control or eradication program training pursuant to 4 TAC Chapter 47, concerning Authorized Personnel.]

(23) [(28)] USDA--The United States Department of Agriculture.

#### §40.2. General Requirements.

(a) Procedures for issuing hold orders and quarantines.

(1) Any CWD-suspect animals and CWD-suspect herds [herd] shall be immediately reported to a commission representative. A CWD-suspect herd may [shall] be restricted by hold order until the commission's epidemiologic investigation and approved laboratory testing are complete.

(2) A CWD-positive herd may be restricted by quarantine or hold order until the requirements of subsection (b)(2) of this section are complete. [A CWD-trace herd shall be restricted by hold order until an epidemiologic investigation by the commission is complete and the herd meets all herd plan requirements.]

(3) A CWD-trace herd may be restricted by quarantine or hold order until the requirements of subsection (b)(3) of this section are complete. [A CWD-positive herd shall be restricted by quarantine until the herd meets all herd plan requirements.]

(4) Any CWD-suspect herd, CWD-positive herd, or CWD-trace[, and CWD-positive] herd not complying with the epidemiologic investigation or herd plan requirements may [shall] be restricted by quarantine.

(b) Requirements for CWD-suspect herds, CWD-trace herds, or CWD-positive herds.

(1) Upon request of the commission, animals in a CWD-suspect herd [animals] shall be presented to a commission representative for the purpose of inspection or to collect and submit [collection and submission of] appropriate samples to an approved laboratory for diagnosis.

(2) Disposition of a CWD-positive herd [as determined by a commission or USDA epidemiologist following completion of the investigation]. If a CWD-positive herd is subject to a quarantine or hold order, the commission will develop a herd plan [A herd plan will be developed by a commission or USDA epidemiologist] in consultation with the herd owner, and, if requested, their veterinarian. The herd plan will specify the measures to be implemented to minimize the transmission of CWD and the steps required to complete the herd plan. Unless otherwise determined by a commission epidemiologist and approved by the executive director, a CWD-positive herd shall be maintained under the terms of the herd plan until all the requirements of the herd plan are met. [shall include the following requirements for a period of five years:]

[(A) Routine visual inspection of all animals in the herd by a commission or USDA veterinarian for the purpose of early detection of CWD-suspect animals.]

[(B) Annual verification of herd inventory by a commission or USDA veterinarian.]

~~[(C) All CWD-suspect animals and all mortalities of all CWD susceptible species shall be immediately reported to a commission or USDA veterinarian for the purpose of collection of appropriate samples for submission to an approved laboratory for CWD surveillance.]~~

~~[(D) CWD-exposed animals must be:]~~

~~[(i) Humanely euthanized, tested for CWD by official CWD test, and disposed of as specified in subsection (e) of this section; or]~~

~~[(ii) Maintained under the terms of the herd plan until all requirements of the herd plan are met.]~~

~~[(E) The herd shall remain under quarantine for five years from the last exposure to a CWD-positive animal or a CWD-exposed animal and until such time that all herd plan requirements are met.]~~

~~(3) Disposition of CWD-trace herds. If a CWD-trace herd is subject to a quarantine or hold order, the commission will develop a herd plan [A herd plan will be developed by a commission or USDA epidemiologist] in consultation with the owner, and, if requested, their veterinarian. The herd plan will specify the measures to be implemented to minimize the transmission of CWD and the steps required to complete the herd plan. Unless otherwise determined by a commission epidemiologist and approved by the executive director, a CWD-trace herd shall be maintained under the terms of the herd plan until all requirements of the herd plan are met. [the herd plan shall include the following requirements for a period of five years:]~~

~~[(A) Routine visual inspection of all animals in the herd by a commission or USDA veterinarian for the purpose of early detection of CWD-suspect animals.]~~

~~[(B) Annual verification of herd inventory by a commission or USDA veterinarian.]~~

~~[(C) All CWD-suspect animals and all mortalities of all CWD susceptible species shall be immediately reported to a commission or USDA veterinarian for the purpose of collection of appropriate samples for submission to an approved laboratory for CWD surveillance.]~~

~~[(D) CWD-exposed animals must be:]~~

~~[(i) Humanely euthanized, tested for CWD by official CWD test, and disposed of as specified in subsection (e) of this section; or]~~

~~[(ii) Maintained under the terms of the herd plan until all requirements of the herd plan are met.]~~

~~(c) Disposal of CWD-suspect animal and CWD-exposed animal carcasses. After all required postmortem tissue samples are collected, carcasses or remaining parts of CWD-suspect animals and CWD-exposed animals, including all animal products, by-products, and contaminated materials, shall be disposed of by deep burial or incineration on the premises where the animal was located or at a facility approved by the commission [executive director].~~

~~(d) Payment of indemnity. The commission may participate in paying indemnity to purchase and dispose of CWD-positive animals, CWD-exposed animals, and CWD-suspect animals. Subject to available funding, the amount of the state payment for any such animals will be five percent of the appraised value established in accordance with 9 CFR §55.3. This payment is in participation with any federal indemnity payments made in accordance with 9 CFR §55.2.~~

#### *§40.5. Surveillance and Movement Requirements for Exotic CWD Susceptible Species.*

(a) Definitions. In addition to the definitions in §40.1 of this chapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings:

(1) Captive--designation of a group of exotic CWD Susceptible Species that are held in confinement on a premises by fencing or natural barriers that are intended to prevent the ingress and egress of cervids.

(2) [(4)] Eligible Mortality--The death from any cause of an exotic CWD susceptible species that is 12 months of age or older [on any and all premises which raise and/or contain any exotic CWD susceptible species, whether a premises engages in live transport of these animals or not]. This includes hunter harvest or herd culling on the premises, natural mortalities on the premises, and animals moved directly to slaughter.

(3) [(2)] Exotic CWD Susceptible Species--A non-native cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by an official test conducted by an approved laboratory. This includes but is not limited to North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(4) [(3)] Premises--A physical location(s) which is contiguous, under common ownership or management, and represents a unique and describable geographic location.

(5) [(4)] Transport--Movement of an exotic CWD susceptible species from one non-contiguous property or premises to another.

(b) Annual Surveillance Requirements. Each calendar year, the [The] owner of a premises with captive exotic CWD susceptible species must test [shall have] all eligible mortalities [tested for CWD within seven days] using an official CWD test until three valid test results are obtained and reported to the commission. To be valid, testing samples must be submitted within seven days in accordance with subsection (d) of this section and [shall report] all results must be reported in accordance with subsection (e) of this section. No more than three valid tests results are required for each premise each calendar year to meet this annual surveillance requirement. This requirement applies to any premises where exotic CWD susceptible species are located and is not dependent on the live movement of any of these species or fence height.

(c) Movement Reporting and Identification Requirements.

(1) Live exotic CWD susceptible species moved or transported within the state shall be identified with an official animal identification.

(2) To move live exotic CWD susceptible species to or from a premises, the owner must obtain a PIN or LID from the commission or USDA.

(3) An owner of a premises where captive exotic CWD susceptible species are located [within a high fence] shall keep herd records that include an annual inventory and mortality records for all exotic CWD susceptible species. The inventory shall be reconciled and submitted to the commission on or before April 1 of each year by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512)



719-0729; or by email to CWD\_reports@tahc.texas.gov. Annual inventory records shall be retained for five years following submission to the commission.

(4) A complete movement record for all live exotic CWD susceptible species moved onto or off of a premises shall be submitted to the commission, either in hard or electronic copy on forms provided or authorized by the commission. The person moving the exotic CWD susceptible species must have documentation with the exotic CWD susceptible species being moved to show compliance with the requirements of this subsection. A copy of this documentation must be provided to any market selling these species. Such record shall be submitted within 48 hours of the movement. Movement reporting shall be directed to the commission by writing to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD\_reports@tahc.texas.gov.

(d) Testing Requirements. Exotic CWD susceptible species [All eligible mortalities] shall be tested for CWD using an official CWD test unless alternative testing is authorized in writing by the commission. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector.

(e) Test Result Reporting. The owner shall submit all test results and laboratory reports to the commission within 14 days of receiving the test results by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD\_reports@tahc.texas.gov.

(f) Mortality Recordkeeping.

(1) The owner of a premises where a captive [an] exotic CWD susceptible species eligible mortality occurs shall maintain the following mortality records:

- (A) the date the exotic CWD susceptible species died or was harvested;
- (B) the species, age, and sex of the animal;
- (C) all official animal identification; and
- (D) any other identification number, official or unofficial, on the animal.

(2) The mortality records shall be made available upon request to any commission representative.

(3) The mortality records shall be submitted to the commission on or before April 1 of each year by writing to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD\_reports@tahc.texas.gov.

(4) The mortality record shall be on a form provided or approved by the commission and shall be retained for one year following submission to the commission.

(g) Inspection. To ensure compliance with these rules, a premises where exotic CWD susceptible species are located may be inspected by the commission or authorized agents of the commission.

(h) Dealer Requirements. A dealer is a person engaged in the business of buying or selling exotic CWD susceptible species in commerce on the person's own account, as an employee or agent of a vendor, purchaser, or both, or on a commission basis. To maintain separate herd status for the animals a dealer sells, a dealer shall maintain separate

herd facilities and separate water sources; there shall be at least 30 feet between the perimeter fencing around separate herds; and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds. A dealer shall maintain records for all exotic CWD susceptible species transported within the state or where there is a transfer of ownership, and provide these to a commission representative upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years and shall include the following information:

- (1) Owner's name;
- (2) Location where the animal was sold or purchased;
- (3) Official identification and, if applicable, Ranch tag; note any retags;
- (4) Sex and age of animal;
- (5) Source of animal (if purchased addition);
- (6) Movement to other premises; and
- (7) Disposition of the animal.

§40.7. Executive Director Declaration of a CWD Movement Restriction Zone.

(a) Order Declaring a CWD Movement Restriction Zone [High-Risk Area or County (Order)]. The executive director [Executive Director] may issue an Order to declare a CWD Movement Restriction Zone [high-risk area or county] based on sound epidemiological principles for disease detection, control, and eradication. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease, multiple CWD-positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(b) The Order shall contain the following elements:

(1) The epidemiological criteria for which the order is being issued.

(2) A description of the area or county determined to be high risk that enables a person to identify the area and determine if a premises is included in the area.

(3) A statement that movement of CWD susceptible species is prohibited, if the executive director [Executive Director] determines the threat of disease spread warrants such action.

(4) Any exceptions, terms, conditions, or provisions prescribed under this chapter.

(5) The class of persons authorized by the commission or the executive director [Executive Director] to issue certificates or permits permitting movement.

(6) Any authorized movement certificate or permit must be issued in conformity with the requirements stated in the high-risk Order:

(A) The executive director [Executive Director] may provide a written certificate or written permit authorizing the movement of CWD susceptible species from locations where the CWD susceptible species have been restricted.

(B) The certificate or permit must be issued by a commission representative.

(7) If the Order prohibits the movement of any CWD susceptible species until tested negative for the disease, the executive director [Executive Director] may prescribe:

- (A) any exceptions;

- (B) terms;
- (C) conditions; or

(D) provisions the executive director [~~Executive Director~~] considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the quarantine without endangering those objectives or the health and safety of other CWD susceptible species.

(c) Publication of Notice. The executive director [~~Executive Director~~] shall give notice of the Order:

(1) By publishing notice in a newspaper published in the county where the high-risk area is established; or

(2) By delivering a written notice to the owner or caretaker of the animals or places to be restricted.

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 May 23, 2025.

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Texas Animal Health Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 839-0511



#### 4 TAC §40.3, §40.6

##### STATUTORY AUTHORITY

The repeal within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code:

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or

after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in §161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

*§40.3. CWD Herd Certification Program.*

*§40.6. CWD Movement Restriction Zones.*

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 May 23, 2025.

TRD-202501818

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 839-0511



## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §51.9, §51.10

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 51 titled "Entry Requirements." Specifically, the Commission proposes amendments to §51.9 regarding Exotic Livestock and Fowl, and §51.10 regarding Cervidae.

#### BACKGROUND AND PURPOSE

The Commission is tasked with creating and enforcing entry requirements for livestock, fowl, exotic livestock, and exotic fowl. The Commission proposes amendments to the entry requirements governing ratites and exotic fowl moving between Association of Zoos and Aquariums (AZA) facilities.

The proposed amendments to §51.9 seek to clarify that one of three forms of accepted identification is needed for ratites entering Texas. The amendments also provide simplified requirements for exotic fowl, excluding ratites, moving between AZA accredited facilities. The proposed amendments allow for movement to and from accredited facilities without testing for pullo- rum-typhoid and avian influenza and without entry permitting, provided there is no commingling. This amendment is made because the risk posed by these movements is low. The AZA has rigorous accreditation requirements, transfers between accredited facilities are closely tracked, accredited facilities operate in relatively closed environments, and animals in accredited facilities receive comprehensive care.

The proposed amendments also update the language found in §51.10 concerning movement of cervids from AZA accredited facilities. The language previously referenced the "American Zoo and Aquarium Association (AZAA)." However, the organization has since changed its name. The amendments reflect the name change.

#### SECTION-BY-SECTION DISCUSSION

Section 51.9 includes entry requirements for exotic livestock and fowl. The proposed amendments clarify the identification requirements for ratites entering Texas and create simplified requirements for exotic fowl (other than ratites) moving between AZA accredited facilities.

Section 51.10 includes entry requirements for Cervidae. The proposed amendments update language to reflect the name change of the American Zoo and Aquarium Association to Association of Zoos and Aquariums.

#### FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating

to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

#### PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are reduced administrative burden on Commission permitting and record staff.

#### TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed rules would be in effect, the proposed rules:

- Will not create or eliminate a government program;
- Will not require the creation or elimination of employee positions;
- Will result in no assumed change in future legislative appropriations;
- Will not affect fees paid to the Commission;
- Will not create new regulation;
- Will not expand existing regulations;
- Will not change the number of individuals subject to the rule; and
- Will not affect the state's economy.

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

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 51 do not impose additional costs on regulated persons and are designed to clarify entry requirements for exotic fowl, simplify entry requirements for exotic fowl and Cervidae moving from AZA accredited facilities, and to update language following an organizational name change. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

#### PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 51, Entry Requirements" in the subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may by rule regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epi-

demologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission by rule may provide the method for inspecting and testing animals before and after entry into Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

No other statutes, articles, or codes are affected by this proposal.

#### *§51.9. Exotic Livestock and Fowl.*

(a) (No change.)

(b) Exotic Fowl. ~~[Ratites entering the State of Texas shall meet the specific requirements listed in paragraphs (1) - (4) of this subsection:]~~

(1) Ratites--Ratites entering Texas shall meet the specific requirements listed in paragraphs (A) - (D) of this subsection:

(A) [(1)] Each bird will be individually identified with ~~[either]~~ an RFID device, a permanently attached tag, or an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloacal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(B) [(2)] Ratites destined for slaughter only may enter Texas accompanied by an entry permit and either an owner-ship statement or health certificate without meeting the requirements of subparagraph (A) ~~[paragraph (1)]~~ of this paragraph ~~[subsection]~~.

(C) [(3)] All ratites originating within Texas and changing ownership or being offered for public sale or sold by private treaty within the state must be individually identified with an implanted electronic device, a tag, or a band.

(D) [(4)] All identification must be maintained in the sale records for consignments to a public sale or in the records of the buyer and seller when the animals are sold at private treaty. These records must be maintained for a period of three years.

(2) Association of Zoos and Aquariums (AZA) accredited facility. Exotic fowl, other than ratites, moving from an AZA accredited facility directly to another AZA accredited facility are exempt from the required pullorum-typhoid and avian influenza testing and from entry permitting provided those exotic fowl being moved are not commingled with exotic fowl or domestic poultry from other sources during the transfer. Exotic fowl sold or transferred from an AZA accredited facility located either in Texas or another state to an owner/agent in Texas that is not an AZA accredited facility must comply with all testing and entry permit requirements. Ratites moving from an AZA accredited facility must follow entry requirements for ratites set forth in §51.10(b)(1) of this title (relating to Cervidae).

#### *§51.10. Cervidae.*

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

(c) Tuberculosis. No animal with a response to any tuberculosis test is eligible for entry unless that animal is subsequently classified negative for tuberculosis based upon an official tuberculosis test, or is consigned directly to slaughter.

(1) Accredited-Free herds. Cervids that originate from Accredited-Free herds may enter without further tuberculosis testing provided they are accompanied by a certificate stating such cervids originated from an Accredited-Free herd.

(2) Qualified herds. Cervids not known to be affected with or exposed to tuberculosis that originate from Qualified herds may enter if they are accompanied by a certificate stating that such cervids originate from a qualified herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement. If the qualifying herd test was administered within 90 days of movement, the animal(s) do not require an additional test.

(3) Monitored herds. These cervids not known to be affected with or exposed to tuberculosis that originate from Monitored herds may enter if they are accompanied by a certificate stating that such cervids originate from a monitored herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement.

(4) All other herds. These cervids not known to be affected with or exposed to tuberculosis that originate from all other herds may enter if they are accompanied by a certificate stating that such cervids have been classified negative to two official tuberculosis tests, which were conducted no less than 90 days apart; that the second test was conducted within 90 days prior to the date of movement; and that the animals were isolated from all other members of the herd during the testing period.

(5) Cervids less than 12 months of age that originate from and were born in accredited, qualified, or monitored herds. These cervids may enter without further tuberculosis testing provided they are accompanied by a certificate stating that such cervids originated from such herds and have not been exposed to cervids from a lower status.

(6) Association of Zoos and Aquariums (AZA) [American Zoo and Aquarium Association (AZAA)] accredited facility. Cervids moving from an AZA [American Zoo and Aquarium Association (AZAA)] accredited facility directly to another AZA accredited facility [accredited by the AZAA] are exempt from these entry requirements provided those cervids being moved are not commingled with cervids from other sources during the transfer. Cervids sold or transferred

from an AZA [AZAA] accredited facility located either in Texas or another state to an owner/agent in Texas that is not an AZA accredited facility [~~other than another AZAA accredited facility;~~] must comply with these testing requirements.

(7) TB restricted area in Michigan. Cervids originating from the TB restricted zone(s) in Michigan shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, §§77.10 - 77.19, prior to entry with results recorded on the certificate of veterinary inspection.

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

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Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 839-0511



## TITLE 13. CULTURAL RESOURCES

### PART 7. STATE PRESERVATION BOARD

#### CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

##### 13 TAC §111.27

1. INTRODUCTION: The State Preservation Board (SPB) proposes the amendment of 13 TAC §111.27(b)(2), concerning General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds. Section 111.27 is being amended to change the terminology from "*seeing eye*" dogs to "*service*" dogs.

The SPB proposes the amendment in response to SB 2333, 88 Reg. Session which changes the language in Texas Government Code §443.018(b) and requires the same change to the Texas Administrative Code.

2. Fiscal Note: Ms. Cindy Provine, Chief Financial Officer, has determined for each year of the first five years the proposed repeal is in effect, there will be no adverse fiscal impact to state or local governments because of this proposal. There will be no measurable effect on local employment or the local economy because of the proposal. Therefore, a local employment impact statement under Government Code §2001.022 is not required.

3. Public Benefit/Cost Note: Ms. Provine has also determined that for each year of the first five years the proposal repeal is in effect, there is no change to public benefit. She has further determined that there will be no economic cost to any member of the public or any other public or private entity.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total costs imposed by an amount that is equal to or greater than the cost of the proposed rule. As described above, the SPB has

determined that the proposed repeal will not impose any cost on anyone, and so §2001.0045 does not apply.

4. Government Growth Impact Statement: Government Code §2001.0221 requires that a state agency prepare a government growth impact statement that reasonably describes what effects a proposed rule may have during the first five years it is in effect. The SPB has determined that the proposed repeal will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the agency. Implementation of the proposal will not require the creation or elimination of employee positions and will not require an increase or decrease in further legislative appropriations to the agency. The proposal does repeal an existing procedural rule regarding voluntary conduct, but it does not create a new prescriptive or proscriptive regulation, or expand, limit, or repeal such a regulation. Though the public's ability to seek to display exhibits in the Capitol through this program will be eliminated, the regulation was not prescriptive. Thus, the number of individuals whose conduct is subject to the rule's applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

5. Economic Impact Statement and Regulatory Flexibility Analysis: The SPB has determined the proposed rule amendment will not have an economic effect on small businesses, micro businesses, or rural communities. Therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code §2006.002(c).

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

7. Request for Public Comment: To comment on the proposal, submit written comments by 5:00 p.m. (Central) on July 7, 2025 to [spbadmin@tspb.texas.gov](mailto:spbadmin@tspb.texas.gov). Please add the words Rule Comments in the subject line. A request for public hearing must be in writing and sent separately from any written comments. Send these requests to [spbadmin@tspb.texas.gov](mailto:spbadmin@tspb.texas.gov).

8. Statutory Authority: This action is requested under Texas Government Code §443.007(b), which authorizes the SPB to adopt rules concerning certain buildings, their contents, and their grounds.

The proposed amendment affects no other code, article, or statute.

*§111.27. General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds.*

(a) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purpose are prohibited from:

(1) attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the board;

(2) placing furniture in the Capitol or on the grounds of the Capitol for a period that exceeds 24 hours except as approved by the board;

(3) setting up or placing camping equipment, shelter, tents, or related materials in the Capitol or on the grounds of the Capitol except as approved by the board for special events;

(4) blocking ingress and egress:

- (A) into the Capitol; or
  - (B) into rooms or hallways within the Capitol, except as approved by the board;
  - (5) conducting actions that pose a risk to safety;
  - (6) smoking in the public areas of the Capitol and Capitol extension;
  - (7) bringing balloons into the Capitol or Capitol extension; and
  - (8) riding, leading, placing or displaying livestock, including but not limited to equine and bovine animals, except as approved by the board as part of a scheduled event, or as needed for security purposes.
- (b) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purposes shall be required to:
- (1) leave the Capitol when the building is closed to the public; and
  - (2) restrain pets at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board. All pets except service [Seeing Eye] dogs are not permitted in the Capitol.
- (c) The board may require and collect a standardized fee from a person or entity that uses the Capitol, the Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The fee is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or activity. The office of the State Preservation Board shall set the amounts of fees required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities.
- (d) Except as provided by this subsection, the sale or consumption of alcoholic beverages, the possession of an open container of an alcoholic beverage, or the gift of an alcoholic beverage in an open container or for on-premises consumption is prohibited in the Capitol, in the Capitol extension, and on the Capitol grounds. This prohibition does not apply to:
- (1) areas not under the control of the board, including offices, reception areas, and similar areas under the control of the legislature, a legislative agency, the governor, or another state officer; or
  - (2) events of significant importance to the history of the Capitol that are conducted in areas under the control of the board and for which the office of the State Preservation Board has approved consumption of alcoholic beverages in response to a written request from the sponsor of the event that documents the importance of the event to the history of the Capitol.
- (e) The buildings and grounds under the authority of the board shall not be used for the commercial benefit of any individual, business, corporation, special interest group or other entity.
- (f) For the safety of the public, skateboarding, roller skating, roller blading, and related activities are prohibited in the building, garages, and grounds under the authority of the State Preservation Board.
- (g) TV satellite trucks may not park on the Capitol drive. TV transmission cables may not be brought into the Capitol or Capitol extension.

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 May 21, 2025.

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Rod Welsh

Executive Director

State Preservation Board

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 463-4180



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §§111.2; Subchapter D, §§111.30 and 111.35; Subchapter E, §§111.40 - 111.42, 111.45, and 111.47; Subchapter F, §§111.51, 111.52, and 111.55; Subchapter H, §§111.70; Subchapter I, §§111.80 - 111.82, 111.85, and 111.87; Subchapter J, §§111.90 - 111.92, and 111.95; Subchapter L, §§111.115; Subchapter P, §§111.150 and 111.154; and Subchapter Q, §§111.160; the repeal of existing rules at Subchapter C, §§111.22; Subchapter F, §§111.50, and Subchapter H, §§111.75; and new rules at Subchapter F, §§111.50 and Subchapter H, §§111.75, regarding the Speech Language Pathologists and Audiologists program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 111, implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department. Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 111, 112, 116, and 402, as applicable.

The proposed rules update requirements for all speech-language pathology and audiology license types, including changes relating to license application and eligibility, education and clinical work, internship and supervision, practice and duties, and license terms and renewals. The proposed rules are necessary to implement changes recommended by Department staff during the required four-year rule review and changes recommended by the Licensing Workgroup of the Speech Language Pathologist and Audiologist Advisory Board.

#### *Four-Year Rule Review Changes*

The proposed rules include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required review of Chapter 111, and the Commission readopted the rule chapter in its entirety in its current form. (Proposed Rule Review, 45 TexReg 7281, October 9, 2020. Adopted Rule Review, 46 TexReg 2050, March 26, 2021).

In response to the published Notice of Intent to Review, the Department received multiple public comments from interested parties. Two of those comments related to the rules included in this rules package. (The other public comments have already been addressed in previous separate rulemakings.) One comment suggested adding a licensing exam for speech-language pathology assistants, and the other comment suggested that the requirements for speech-language pathologist assistants are excessive compared to the requirements for physical therapy assistants and certified occupational therapy assistants. The proposed rules do not include any changes made in response to these comments.

The proposed rules include recommendations made by the Department staff during the four-year rule review process to correct and update citations and cross-references, to improve accuracy, readability, and consistency of the rule text, and to implement substantive changes related to license application and eligibility, education and clinical work, internship and supervision, practice and duties, and license terms and renewals.

The proposed rules also include recommendations made by the Licensing Workgroup of the Speech Language Pathologist and Audiologist Advisory Board during the four-year rule review process that implement substantive changes related to license application and eligibility, education and clinical work, internship and supervision, practice and duties, and license terms and renewals.

#### *Advisory Board Recommendations*

The proposed rules were presented to and discussed by the Speech-Language Pathologists and Audiologists Advisory Board at its meeting on April 29, 2025. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

### SECTION-BY-SECTION SUMMARY

#### *Subchapter A. General Provisions.*

The proposed rules amend §111.2, Definitions. The proposed rules add definitions for "ABA Certification," "ASHA CCC," and "Assistant supervision plan"; amend the definition of "Intern in audiology" and amend the terminology for "Intern supervision plan"; repeal the definitions for "Extended absence" and "Supervisory Responsibility Statement (SRS) Form"; and renumber the terms in this section as needed. The proposed rules in this section are part of a larger effort in this rules package to replace the names of the specific supervision forms with the general terms "intern supervision plan" and "assistant supervision plan."

#### *Subchapter C. Examinations*

The proposed rules repeal §111.22, Waiver of Written Examination Requirement. The proposed rules repeal this separate rule regarding the waiver of the written examination requirement and the issuance of a license to an applicant who holds the ASHA Certificate of Clinical Competence (ASHA CCC) or the American Board of Audiology (ABA) Certification. The waiver of the written examination requirement is already addressed with the waiver of the clinical experience requirement in the existing rules for the Speech-Language Pathology license under §111.35 and for the Audiology license under §111.75. Those provisions are being updated in this rules package.

#### *Subchapter D. Requirements for Speech Language Pathology License.*

The proposed rules amend §111.30, Speech-Language Pathology License--Licensing Requirements. The proposed rules amend subsection (a) to comply with plain language principles. The proposed rules amend subsection (b)(1) to remove the requirement of original or certified copies of transcripts of the applicant's conferred master's degree; amend subsection (b)(4) to clarify that an applicant who possesses a master's degree in audiology may apply for a speech-language pathology license only if the degree is from a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education; and amend subsections (b)(5) and (b)(6) to reduce form requirements and add clarifying language. The proposed rules amend subsection (c) to comply with plain language principles. The proposed rules amend subsection (d) by adding clarifying language and an additional option for applicants who have completed ASHA-approved clinical fellowship requirements; remove existing subsection (d)(1) and its requirement that individual applicants are licensed under §111.41 prior to the beginning of the internship; and relocate the existing subsection (d)(2) proof requirements for individuals who completed an internship in another state, to new §111.35(c). The proposed rules amend subsection (e) to comply with plain language principles.

The proposed rules amend §111.35, Speech-Language Pathology License--Application and Eligibility Requirements. The proposed rules update subsection (a) to require all information and documentation to be submitted in a form and manner prescribed by the Department, with original or certified copies submitted upon request. The proposed rules relocate the application requirements for persons who hold the ASHA CCC under subsection (d) to new subsection (b); expand the application requirements to include persons who have held the ASHA CCC in the past; provide that the ASHA CCC demonstrates that the applicant has met the education, experience, and written examination requirements; and update and clarify the necessary documentation to be submitted by applicants who hold or have held the ASHA CCC. The proposed rules amend relabeled subsection (c) (former subsection (b)) to update and clarify the necessary documentation for applicants who have never held the ASHA CCC. The proposed rules repeal former subsection (d), regarding persons holding the ASHA CCC and the waiver of the clinical experience and examination requirements. The requirements under former subsection (d) have been updated and relocated to new subsection (b). The proposed rules update the cross-references in subsection (e).

#### *Subchapter E. Requirements for Intern in Speech Language Pathology License.*

The proposed rules amend §111.40, Intern in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Work. The proposed rules amend subsection (b) to clarify programs in candidacy status are considered accredited; reduce the form requirements of subsection (b)(1) by repealing the requirement of original or certified copies of transcripts of the applicant's conferred master's degree; amend subsection (b)(4) to require an applicant program to be accredited by a national accrediting organization approved by the Department and recognized by the US Secretary of Education under the Higher Education Act of 1965 and remove language referencing repealed academic and clinical experience requirements; and amend subsections (b)(5) and (b)(6) by reducing form requirements and adding clarifying language. The proposed rules amend subsection (d) to specify that if coursework and clinical



experience were earned more than ten years ago, then proof of current knowledge of speech-language pathology may include completing ten hours of CE in the last year, holding a current license in another state, or taking the written examination. The proposed rules amend subsection (e) to clarify that if an applicant whose degree was not officially conferred has completed all education and clinical requirements, then the applicant may be licensed as an intern if the degree was completed at a college or university accredited by the ASHA Council on Academic Accreditation. The proposed rules amend subsection (f) to clarify that a person who completes all education and clinical requirements at a foreign or unaccredited college or university must wait for the official conferment of a master's degree and to repeal automatic approval upon verification.

The proposed rules amend §111.41, Intern in Speech-Language Pathology License--Internship and Supervision Requirements. The proposed rules update subsection (c) by repealing the Intern Plan and Agreement of Supervision Form and requiring an intern to complete supervised professional experience under an intern supervision plan and submit the plan in a form and manner approved by the Department. The proposed rules update subsections (c)(1) through (c)(6) to clarify intern supervision requirements and to require all relevant information to be submitted in a form and manner approved by the Department. The proposed rules update subsection (d)(3) to clarify that professional experience of less than five hours per week must be completed under an approved supervisor but cannot be used to meet the 36-week minimum or be added to the 1,260-hour requirement. The proposed rules update subsection (d)(5) to repeal the option for Department approved alternative plans for dividing thirty-six clock hours of supervisory activities into three segments. The proposed rules amend subsection (e) to remove the internship extension request process and to provide that only hours earned under Texas-licensed supervisors count towards the 36 week, 1,260-hour minimums internship requirements. The proposed rules amend subsection (f) to increase the formal evaluation record retention requirement for both intern and supervisor from three to four years. The proposed rules update subsection (g)(1) to require supervisors to submit a report within 30 days in a prescribed format and follow Departmental guidelines that detail their supervision hours and weeks; update subsection (g)(2) to require supervisors to determine if an intern's hours and weeks are acceptable, and if so, submit an affirmation of their acceptability in a form and manner approved by the Department; update subsection (g)(3) to provide the requirements for a written justification when a supervisor determines that the hours completed under the supervisor's supervision are not acceptable; update subsection (g)(4) to require that if no hours were earned, the intern or supervisor must submit a statement to the Department within 30 days of the end of supervision.

The proposed rules amend §111.42, Intern in Speech-Language Pathology License--Practice and Duties of Interns. The proposed rules amend subsection (a) to clarify a licensed intern must obtain supervised professional experience under a licensed speech-language pathologist approved by the Department. The proposed rules amend subsection (e) to add a requirement for an intern who passed the examination referenced in §111.21 and wishes to continue practicing after completing the internship specified in §111.41(d) to apply for a speech-language pathology license within 30 days of passing the examination. The proposed rules amend subsection (f) to authorize a licensed intern to continue practicing while awaiting

the processing of their speech-language pathology license if the intern practices under their current supervisor's license and to reduce form requirements.

The proposed rules amend §111.45, Intern in Speech-Language Pathology License--Application and Eligibility Requirements. The proposed rules amend subsection (a) to clarify the form and manner in which an applicant must submit required information and documentation, with original or certified copies submitted upon request. The proposed rules amend subsection (b) by amending subsection (b)(2) to remove the requirement for a copy of a transcript to be an original or certified; replacing existing subsection (b)(4) with new subsection (b)(3) and clarifying the verification requirements when a graduate degree has not been conferred; relabeling existing subsection (b)(3) to become new subsection (b)(4) and revising its text to clarify the verification requirements for an applicant whose college or university is not accredited by ASHA; repealing the text of existing subsection (b)(4); amending subsection (b)(5) to remove the requirement that the evaluation form be an original and to add the requirement that the transcript evaluation service be approved by ASHA; and amending subsection (b)(6) to remove the form requirement.

The proposed rules amend §111.47, Intern in Speech-Language Pathology License--License Terms; Renewals. The proposed rules amend subsection (a) to clarify an intern license can be renewed annually up to three times; add new subsection (b) to provide the time period within which the internship must be completed and the examination must be passed; and relabel existing subsections (b) through (i) to become new subsections (c) through (j).

#### *Subchapter F. Requirements for Assistant in Speech Language Pathology License.*

The proposed rules repeal existing §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. The provisions in this repealed rule have been updated and supplemented under new §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience.

The proposed rules add new §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. This new rule includes provisions from existing §111.50, which is being repealed, and updates and supplements the current requirements and procedures for education and clinical observation and experience. The proposed rules add new subsection (a) to require a license to practice as an assistant in speech-language pathology; add new subsection (b) to provide the degree requirements for a license; add new subsection (c) to provide the course work requirements for a license; add new subsection (d) to provide the clinical observation and experience requirements for a license; add new subsection (e) to provide the requirements for an applicant who has not acquired the required hours under subsection (d); add new subsection (f) to provide the requirements for an applicant whose degree, course work, or clinical observation and experience were earned more than 10 years before the date of application; and add new subsection (g) to prohibit an assistant from performing any duties until the license has been issued and any missing hours are complete.

The proposed rules amend §111.51, Assistant in Speech-Language Pathology License--Supervision Requirements. The pro-

posed rules amend subsection (c) to require an assistant to practice under an assistant supervision plan and provide the requirements for the plan; amend subsection (c)(1) to provide the requirements for department approval; replace existing subsection (c)(2) with language providing when the plan must be submitted; relabel existing subsection (c)(2) to become new subsection (c)(3) and amend its language to provide the requirements when more than one speech-language pathologist agrees to supervise an assistant; relabel existing subsection (c)(3) to become new subsection (c)(4) and amend its language to prohibit an assistant from practicing without an approved supervisor and to require the supervisor to verify that the assistant appears under the supervisor's license; relabel existing subsection (c)(4) to become new subsection (c)(5) and amend its language to require an assistant to only provide services for the caseload of the assistant's current, approved supervisor; relabel existing subsection (c)(5) to become new subsection (c)(6) and amend its language to provide the requirements of the supervisor when the supervisor ceases supervision of the assistant; relabel existing subsection (c)(6) to become new subsection (c)(7) and amend its language to provide the requirements of the assistant when the supervisor ceases supervision. The proposed rules amend subsections (d) and (f) through (k) to make cleanup changes.

The proposed rules amend §111.52, Assistant in Speech-Language Pathology License--Practice and Duties of Assistants. The proposed rules add new subsection (c)(5) to including acting as a translator in the list of duties that a supervisor may assign to an assistant; relabel existing subsections (c)(5) through (c)(7) to become new subsections (c)(6) through (c)(8); add new subsection (c)(9) to include preparing and creating daily notes in the list of duties that a supervisor may assign to an assistant; and relabel existing subsections (c)(8) and (c)(9) to become new subsections (c)(10) and (c)(11). The proposed rules amend subsection (d)(12) to provide that an assistant must not practice without an approved supervisor and to remove the requirement to file a Supervisory Responsibility Statement; amend subsection (d)(16) to provide that an assistant must not demonstrate feeding strategies or precautions to clients, family, or staff; and repeal (d)(19), which consists of provisions that are relocated to subsection (g). The proposed rules amend subsection (e) to conform with plain language principles; add new subsection (g) to provide the terms licensed assistants may and may not use to shorten their professional title; and add new subsection (h) to provide the terms licensed assistants who have earned their ASHA certification may use in their professional title.

The proposed rules amend §111.55, Assistant in Speech-Language Pathology License-- Application and Eligibility Requirements. The proposed rules update subsections (a) and (b)(2)-(3) to reduce form requirements for applicants; add new subsection (b)(4) to provide the requirements when the applicant's transcript is in a language other than English or the degree was earned at a foreign university; relabel existing subsection (b)(4) to become new subsection (b)(5) and update its language to require a university program director or designee to verify 25 hours of clinical observation and 25 hours of clinical assisting experience; relabel existing subsection (b)(5) to become new subsection (b)(6) and update its language to require an applicant to complete any missing hours under direct supervision from an approved supervisor up license issuance; and relabel existing subsections (b)(6) and (b)(7) to become new subsections (b)(7) and (b)(8).

#### *Subchapter H. Requirements for Audiology License*

The proposed rules amend §111.70, Audiology License--Licensing Requirements. The proposed rules amend subsection (a) to comply with plain language principles; amend subsection (c) to reduce form requirements and to provide that the transcript evaluation service must be approved by ASHA; amend subsection (d) to comply with plain language principles and rephrase language for clarity; and amend subsection (e) to comply with plain language principles. The proposed rules repeal existing subsection (f), which addresses persons who previously held the ASHA CCC or the ABA certification. Those requirements have been updated and are addressed in the proposed rules under new §111.75(b).

The proposed rules repeal existing §111.75, Audiology License--Application and Eligibility Requirements. The provisions in this repealed rule have been updated and supplemented under new §111.75, Audiology License--Application and Eligibility Requirements.

The proposed rules add new §111.75, Audiology License--Application and Eligibility Requirements. This new rule includes provisions from existing §111.75, which is being repealed, and updates and supplements the current application and eligibility requirements. The proposed rules add new subsection (a) to require all information and documentation to be submitted in a form and manner prescribed by the Department, with original or certified copies submitted upon request. The proposed rules add new subsection (b) to expand the existing application requirements to include persons who have held the ASHA CCC or ABA Certification in the past; provide that the ASHA CCC or ABA Certification demonstrates that the applicant has met the education, experience, and written examination requirements; and update and specify the documents that must be submitted by an applicant for an audiology license who holds or has held the ASHA CCC or ABA Certification. The proposed rules add new subsection (c) to specify the documents that must be submitted by an applicant who has never held the ASHA CCC or ABA Certification; add new subsection (d) to require an applicant to submit fingerprints and successfully pass a criminal history background check; add new subsection (e) to provide the requirements for an applicant seeking to upgrade an intern in audiology license to an audiology license; and add new subsection (f) to provide that an applicant must complete all licensing requirements within one year from the date the application was submitted.

#### *Subchapter I. Requirements for Intern in Audiology License*

The proposed rules amend §111.80, Intern in Audiology License--Licensing Requirements--Education. The proposed rules amend subsection (a) to comply with plain language principles; add clarifying language to subsections (b) and (c) regarding education requirements; and repeal subsection (d), which consists of language that is relocated to new §111.85(b)(2).

The proposed rules amend §111.81, Intern in Audiology License--Internship and Supervision Requirements. The proposed rules amend subsection (c) to require an intern to complete the supervised professional experience under an intern supervision plan that must be submitted to the Department; rephrase subsection (c)(1) for clarity; add new subsection (c)(2) to specify when an intern supervision must be submitted; relabel existing subsection (c)(2) to become new subsection (c)(3) and update its language to specify the requirements when more than one audiologist agrees to supervise an intern; relabel existing subsection (c)(3) to become new subsection (c)(4) and update its language to require the supervisor to verify that the intern appears under

the supervisor's license before allowing the intern to practice; relabel existing subsection (c)(4) to become new subsection (c)(5) and update its language to provide that the supervisor is responsible for the practice of the intern until the intern is removed from the supervisor's license; and relabel existing subsection (c)(5) to become new subsection (c)(6) and update its language to provide that an intern whose supervisor ceases supervision may not practice until the intern has a new approved supervisor and has been added to a new supervisor's license. The proposed rules amend subsection (d) to comply with plain language principles; remove existing subsection (d)(2) and its requirement that an internship consist of 1,600 hours of supervised clinical work and replaces it with new (d)(2) which requires all internships consist of supervised professional experience conducted under the direction of a professionally recognized accredited doctoral program as approved by the department. The proposed rules repeal subsection (e), which described the procedures related to the Audiology Intern Plan and Agreement of Supervision Form, as this Form is no longer required due to the proposed rules' amendment of §111.81(c). The proposed rules also relabel existing subsection (f) to become new subsection (e).

The proposed rules amend §111.82, Intern in Audiology License--Practice and Duties of Interns. The proposed rules amend subsection (a) to clarify that a licensed audiology intern must obtain supervised professional experience under an approved audiologist. The proposed rules amend subsection (c) to reduce form requirements.

The proposed rules amend §111.85, Intern in Audiology License--Application and Eligibility Requirements. The proposed rules amend subsection (a) to require all information and documentation to be submitted in a form and manner prescribed by the Department, with original or certified copies submitted upon request. The proposed rules amend subsection (b) to reduce form requirements and require all information and documentation to be submitted in a form and manner prescribed by the Department.

The proposed rules amend §111.87, Intern in Audiology License--License Terms; Renewals. The proposed rules amend subsection (a) to provide that an audiology intern license is valid for two years and can be renewed biennially. The proposed rules amend subsection (c)(2) to reduce form requirements.

#### *Subchapter J. Requirements for Assistant in Audiology License*

The proposed rules amend §111.90, Assistant in Audiology License--Licensing Requirements--Education and Training. The proposed rules amend subsections (a) and (b) to comply with plain language principles. The proposed rules amend subsection (b)(3) to specify that an applicant must hold a baccalaureate degree; amend subsection (b)(4) to clarify that an assistant must work under an approved supervisor and an assistant supervision plan approved by the Department; amend subsection (b)(5) to require an assistant to agree to complete a minimum of 25 hours of job-specific competency-based training conducted by the supervisor upon the initial issuance of the license; and add new subsection (b)(6) to require an assistant to complete all training hours under the supervision of an approved supervisor. The proposed rules replace the language of subsection (c) with new language providing when an assistant may begin to practice.

The proposed rules amend §111.91, Assistant in Audiology License--Supervision Requirements. The proposed rules amend subsection (c) to remove references to the Supervisory Respon-

sibility Statement Form and to provide that a supervisor must ensure all training hours completed by the assistant are supervised; amend subsection (c)(1) to provide that Department approval is required prior to any changes in supervision; add new subsection (c)(2) to specify when an assistant supervision plan must be submitted; relabel existing subsection (c)(2) to become new subsection (c)(3) and amend its language to provide the supervisor responsibilities for when more than one audiologist agrees to supervise the assistant; relabel existing subsection (c)(3) to become new subsection (c)(4) and amend its language to provide that the supervisor must verify that the assistant appears under the supervisor's license before allowing the assistant to practice; relabel existing subsection (c)(4) to become new subsection (c)(5) and amend its language to provide that the assistant must only provide services for the clients of the assistant's current, approved supervisors; relabel existing subsection (c)(5) to become new subsection (c)(6) and amend its language to provide that a supervisor is responsible for the practice of the assistant until the assistant is removed from the supervisor's license; relabel existing subsection (c)(6) to become new subsection (c)(7) and amend its language to provide that, if the assistant's supervisor ceases supervision, the assistant may not practice until the assistant has a new approved supervisor. The proposed rules add new subsection (d) to provide that an assistant must practice under an assistant supervision plan, which must be submitted to the Department. The proposed rules relabel existing subsections (d) through (j) to become new subsections (e) through (k) and amend their language to comply with plain language principles.

Notably, the proposed rules relabel former subsection (f) to become new subsection (g) and amend its language to reduce the minimum amount of supervision for audiology assistants from 10 hours per week to four hours per week, or alternatively, from 40 hours per month to 16 hours per month. The amended language of new subsection (g) also requires at least one hour per week or four hours per month of the total supervision to be under direct supervision.

The proposed rules amend §111.92, Assistant in Audiology License--Practice and Duties of Assistants. The proposed rules amend subsection (d) to comply with plain language principles and amend subsection (d)(18) to remove the requirement for a Supervisory Responsibility Statement for an Audiology Assistant Form to be on file with the Department and replace it with the requirement for an approved supervisor.

The proposed rules amend §111.95, Assistant in Audiology License--Application and Eligibility Requirements. The proposed rules amend subsection (a) to require all information and documentation to be submitted in a form and manner prescribed by the Department, with original or certified copies submitted upon request. The proposed rules amend subsection (b)(2) to reduce form requirements; amend subsection (b)(4) to allow a copy of a high school diploma; amend subsection (b)(5) to remove the requirement for an original or certified copy of the CAOHC certificate; and amend subsection (b)(6) to clarify the requirements for an applicant who holds a baccalaureate degree or higher in communicative sciences or disorders.

#### *Subchapter L. Requirements for Dual License in Intern in Speech-Language Pathology and Audiology*

The proposed rules amend §111.115, Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements. The proposed rules amend subsection (a) to require all information and documentation to be submitted in a form

and manner prescribed by the Department, with original or certified copies submitted upon request. The proposed rules amend subsection (d) to provide the documentation requirements for an applicant who holds or has held the ASHA CCC or ABA Certification.

#### *Subchapter P. Responsibilities of the Licensee and Code of Ethics*

The proposed rules amend §111.150, Changes of Name, Address, or Other Information. The proposed rules amend subsection (a) to require a licensee to provide the Department with a contact phone number and a valid email address and to repeal the requirement that a licensee provide the Department with current employment information. The proposed rules amend subsections (a) and (c) to comply with plain language principles.

The proposed rules amend the title of §111.154 from "Requirements, Duties, and Responsibilities of Supervisors and Persons Being Supervised" to "Supervision Requirements and Responsibilities." The proposed rules add new subsection (a) to provide that a licensee who wants to supervise an intern or assistant must meet the requirements under this section and be approved by the Department. The proposed rules relabel existing subsection (a) to become new subsection (b) and restructure its language to include new subsection (b)(1) and new subsection (b)(2) to specify the experience requirements. The proposed rules relocate the language of existing subsection (b), regarding supervising family members, to new subsection (d). The proposed rules add new subsection (c) to provide that a licensee must hold the appropriate license type to supervise; relabel existing subsections (c) through (e) to become new subsections (c)(1) through (c)(3); and remove unnecessary language. The proposed rules add new subsection (d), regarding supervising family members, which has been relocated from existing subsection (b). The proposed rules add new subsection (e) to provide that a licensee may not supervise if the licensee has any current sanctions. The proposed rules amend subsections (f) through (h) to provide headings and to comply with plain language principles.

#### *Subchapter Q. Fees*

The proposed rules amend §111.160, Fees. The proposed rules amend subsection (f)(1) and extend the license term for an initial audiology intern license from one year to two years. The \$75 fee for the initial audiology intern license remains unchanged. The proposed rules amend subsection (f)(2) and extend the license term for a renewed audiology intern license from one year to two years. The \$75 fee for the renewal of an audiology intern license remains unchanged.

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

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be a loss in revenue to the state of \$1,125 per year. The proposed rules extend the audiologist intern license from a one-year term to a two-year term without increasing the fee because currently a small number of audiologist interns are forced to renew their one-year license when it is only needed for less than a month, due to the length of the supervised professional experience. This

should result in no audiologist intern needing to renew the license. TDLR has renewed an average of 15 audiologist intern licenses over the past four years at a fee of \$75 per renewal. If interns no longer need to renew, the resulting loss in revenue to the State will be \$1,125 per year.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase in revenue to the state or local government and no estimated loss in revenue to local government as a result of enforcing or administering the proposed rules.

#### **LOCAL EMPLOYMENT IMPACT STATEMENT**

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

#### **PUBLIC BENEFITS**

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be a streamlined application process that will reduce delays in processing incomplete applications; an expanded license term for the audiologist intern license that will provide audiologist interns additional time to complete the supervised professional experience without having to renew their license; increased flexibility for supervisors and supervisees; and clarification and clean-up changes that will make the rules easier to read and understand.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be a reduction in costs (savings) to persons who are required to comply with the proposed rules. The audiologist intern licensees whose supervised professional experience lasts longer than one year will no longer have to pay \$75 to renew their licenses.

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

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

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

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules require a decrease in fees paid to the agency. The proposed rules change the license term for audiologist interns from one year to two years without correspondingly adjusting the fee.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules limit an existing regulation by reducing many form requirements; no longer requiring applicant who held a speech-language pathologist assistant license in another state to submit proof of the required hours of clinical observation and clinical assisting experience; and no longer requiring an audiologist intern to complete 1,600 hours of supervised clinical work, instead allowing the intern to complete the supervised professional experience required to complete the doctoral degree. The proposed rules expand a current regulation by allowing persons without a current ASHA or ABA certification, but who have held certification in the past, to apply using that certification to meet some licensure requirements; authorizing an applicant with a degree from a foreign university in a major other than communicative sciences or disorders to qualify for a speech-language pathologist assistant license if the applicant meets certain coursework requirements, without obtaining executive director approval; authorizing an applicant that has not earned the required hours of clinical observation and clinical assisting experience to obtain the remaining training under supervision once the license is issued; expanding the duties a supervisor may assign to a speech-pathologist assistant; adding professional title abbreviations that licensed speech-pathologist assistants are authorized to use; and authorizing the professional experience needed to supervise interns or assistants to be obtained under a license held in another state.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and that the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §111.2

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

#### §111.2. Definitions.

Unless the context clearly indicates otherwise, the following words and terms must [shall] have the following meanings.

- (1) ABA--The American Board of Audiology.
- (2) ABA Certification--The certification issued to a person who meets the education and professional practice requirements established by ABA.
- (3) [(2)] Act--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists.
- (4) [(3)] Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists; and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.
- (5) [(4)] Advisory board--The Speech-Language Pathologists and Audiologists Advisory Board.
- (6) [(5)] ASHA--The American Speech-Language-Hearing Association.
- (7) ASHA CCC--ASHA Certificate of Clinical Competence. The certificate issued to a person who meets the education, examination, and clinical fellowship requirements established by ASHA.
- (8) [(6)] Assistant in audiology--An individual licensed under Texas Occupations Code §401.312 and §111.90 of this chapter and who provides audiological support services to clinical programs under the supervision of an audiologist licensed under the Act.
- (9) [(7)] Assistant in speech-language pathology--An individual licensed under Texas Occupations Code §401.312 and §111.60 of this chapter and who provides speech-language pathology support services under the supervision of a speech-language pathologist licensed under the Act.
- (10) Assistant supervision plan (for Assistants in Audiology or Speech-Language Pathology)--An agreement between a supervisor and an assistant in which the parties enter into a supervisory relationship, the supervisor agrees to assume responsibility for the assis-

tant's activities, and the assistant agrees to perform only those activities assigned by the supervisor that are not prohibited under this chapter.

(11) [(8)] Audiologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 to practice audiology.

(12) [(9)] Audiology--The application of nonmedical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communication disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.

(13) [(10)] Caseload--The number of clients served by the licensed speech-language pathologist or licensed speech-language pathology intern.

(14) [(11)] Client--A consumer or proposed consumer of audiology or speech-language pathology services.

(15) [(12)] Commission--The Texas Commission of Licensing and Regulation.

(16) [(13)] Department--The Texas Department of Licensing and Regulation.

(17) [(14)] Direct Supervision (Speech-Language Pathology and Audiology)--Real-time observation and guidance by the supervisor while a client contact or clinical activity or service is performed by the assistant or intern. Direct supervision may be performed in person or via tele-supervision as authorized and prescribed by this chapter.

(18) [(15)] Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(19) [(16)] Executive director--The executive director of the department.

[(17) Extended absence--More than two consecutive working days for any single continuing education experience.]

(20) [(18)] Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(21) [(19)] Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes [prescribing, ordering, or authorizing the use of hearing instruments,] the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments.

(22) [(20)] Hearing aid--Any wearable device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing. The term includes hearing instruments and over-the-counter hearing aids.

(23) [(21)] Hearing instrument--A prescription hearing aid as that term is defined in 21 C.F.R. Section 800.30.

(24) [(22)] Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons

with possible hearing impairment which has the potential of interfering with communication.

(25) [(23)] In-person--The licensee is physically present with the client while a client contact or clinical activity or service is performed. In the case of supervision, the supervisor is physically present with the assistant or intern while a client contact or clinical activity or service is performed.

(26) [(24)] Indirect supervision (Speech-Language Pathology and Audiology)--The supervisor performs monitoring activities or provides guidance to the assistant or intern, either of which does not occur during actual client contact by the assistant or intern or while the assistant or intern is providing a clinical activity or service. Tele-supervision may be used for indirect supervision as authorized and prescribed under this chapter.

(27) [(25)] Intern in audiology--An individual licensed under Texas Occupations Code §401.311 and §111.80 of this chapter and who is supervised by an individual who holds an audiology license under Texas Occupations Code §401.302 and §401.304. An intern in audiology is also referred to as a fourth-year student or an extern in the profession.

(28) [(26)] Intern in speech-language pathology--An individual licensed under Texas Occupations Code §401.311 and §111.40 of this chapter and who is supervised by an individual who holds a speech-language pathology license under Texas Occupations Code §401.302 and §401.304.

(29) [(27)] Intern supervision plan [Intern Plan and Agreement of Supervision Form] (for Interns in Speech-Language Pathology and Audiology)--An agreement between a supervisor and an intern in which the parties enter into a supervisory relationship and the supervisor agrees to assume responsibility for all services provided by the intern.

(30) [(28)] Over-the-counter hearing aid--The term has the meaning assigned by 21 C.F.R. Section 800.30.

(31) [(29)] Provisional Licensee--An individual granted a provisional license under Texas Occupations Code §401.308.

(32) [(30)] Sale--The term includes a lease, rental, or any other purchase or exchange for value. The term does not include a sale at wholesale by a manufacturer to a person licensed under the Act or to a distributor for distribution and sale to a person licensed under the Act.

(33) [(31)] Speech-language pathologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304, to practice speech-language pathology.

(34) [(32)] Speech-language pathology--The application of nonmedical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or a group.

(35) [(33)] Supervisor--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 and whom the department has approved to oversee the services provided by the assigned assistant and/or intern. The term "supervisor" and "department-approved supervisor" have the same meaning as used throughout this chapter.

~~[(34) Supervisory Responsibility Statement (SRS) Form (for Assistants in Audiology or Speech-Language Pathology)--An agreement between a supervisor and an assistant in which the parties enter into a supervisory relationship; the supervisor agrees to assume responsibility for the assistant's activities; and the assistant agrees to perform only those activities assigned by the supervisor that are not prohibited under this chapter.]~~

~~(36) [(35)] Telehealth--See definition(s) in Subchapter V, Telehealth.~~

~~(37) [(36)] Tele-supervision--Supervision of interns or assistants that is provided remotely using telecommunications technology.~~

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

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## SUBCHAPTER C. EXAMINATIONS

### 16 TAC §111.22

#### STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed repeal.

*§111.22. Waiver of Written Examination Requirement.*

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

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## SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE

### 16 TAC §111.30, §111.35

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.30. Speech-Language Pathology License--Licensing Requirements.*

(a) An individual must ~~[shall]~~ not practice as a speech-language pathologist without a current license issued by the department. An applicant for a speech-language pathology license must ~~[shall]~~ meet the requirements set out in the Act and this section.

(b) Education. The graduate degree must ~~[shall]~~ be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.).

(1) An applicant must have a master's degree in the area of communicative sciences or disorders that verifies the applicant completed the following:

~~[(4)] [Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:]~~

(A) at least ~~36~~ ~~[thirty-six (36)]~~ semester credit hours must ~~[shall]~~ be in professional course work acceptable toward a graduate degree; and

(B) at least ~~24~~ ~~[twenty-four (24)]~~ semester credit hours acceptable toward a graduate degree must ~~[shall]~~ be earned in the area of speech-language pathology, including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology;

(2) A maximum of six ~~[(6)]~~ academic semester credit hours associated with clinical experience and a maximum of six ~~[(6)]~~ academic semester credit hours associated with a thesis or dissertation may be counted toward the ~~36~~ ~~[thirty-six (36)]~~ hours but not in lieu of the requirements of paragraph (1)(B).

(3) A quarter hour of academic credit must ~~[shall]~~ be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the applicant meets the requirements of §111.30(b)(1) and the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.) stating that the individual completed enough

hours to establish a graduate level major in speech-language pathology [and would meet the academic and clinical experience requirements for a license as a speech-language pathologist].

(5) An applicant whose transcript is in a language other than English or whose degree was earned at a foreign university must [shall] submit an [original] evaluation form from an ASHA-approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders. The applicant must [shall] bear all expenses incurred for the evaluation [during the procedure].

(6) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation must [shall] submit verification [an original signed letter] from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant must [shall] bear all expenses incurred for the verification [during the procedure].

(c) Clinical Work. An applicant must [shall] complete at least 25 ~~[twenty-five (25)]~~ clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993, and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) Internship. An applicant must have either completed an internship in which the supervised professional experience [clinical work] has been accomplished in speech-language pathology as set out in §111.41, or completed the ASHA-approved clinical fellowship requirements.

~~[(1) An individual shall be licensed under §111.41, prior to the beginning of the internship.]~~

~~[(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §111.41 shall:]~~

~~[(A) be licensed in that other state; or]~~

~~[(B) hold the ASHA Certificate of Clinical Competence in speech-language pathology if the other state did not require licensing.]~~

(e) Examination. An applicant must [shall] pass the examination referenced under §111.21.

*§111.35. Speech-Language Pathology License--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request [of credentials on current department-approved forms].

(b) An applicant for a speech-language pathology license who holds or who has held the ASHA Certificate of Clinical Competence (ASHA CCC) may apply by submitting the following required documentation:

(1) a completed application on a department-approved form;

(2) verification of holding a current or expired ASHA CCC, which demonstrates that the applicant has met the education, experience, and written examination requirements for the license;

(3) if the ASHA CCC is expired, proof of current knowledge, which may include completing at least 10 hours of continuing education or other courses within the last year or holding a current license in another state;

(4) proof of successfully completing the jurisprudence examination under §111.23; and

(5) the initial application fee required under §111.160.

(c) [(b)] An applicant for a speech-language pathology license who has never held an ASHA CCC must submit the following required documentation in a form and manner prescribed by the department:

(1) (No change.)

(2) if not previously submitted when applying for an intern's license, a [an original or certified] copy of the transcript(s), which shows all relevant course work and which shows the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, verification [an original signed letter] from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, an [original] evaluation form from an ASHA-approved transcript evaluation service stating that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders;

(5) proof of completion of the internship in a form and manner prescribed by the department;

[(5) a Report of Completed Speech-Language Pathology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;]

(6) if the internship was completed out-of-state, proof of completion of the internship under a licensed supervisor or under a supervisor who held the ASHA CCC if the state does not issue licenses; [one of the following documents regarding the supervisor must be submitted:]

[(A) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or]

[(B) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;]

(7) a copy of the Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(8) proof of successfully completing the jurisprudence examination under §111.23; and

(9) the initial application fee required under §111.160.

(d) [(e)] If not previously submitted when applying for an assistant or intern license, an applicant for a speech-language pathology license must submit a completed legible set of fingerprints, on a de-



partment-approved form, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

~~[(d) Waiver of Clinical Experience and Examination Requirements. An applicant who currently holds the ASHA Certificate of Clinical Competence may submit official documentation from ASHA of the Certificate of Clinical Competence as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this subchapter for a speech-language pathology license. Such an applicant must submit:]~~

~~[(1) an original or certified copy of a signed letter from ASHA, which verifies the applicant currently holds the Certificate of Clinical Competence in the area of speech-language pathology;]~~

~~[(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;]~~

~~[(3) the required documents under subsection (b)(1) and (8) and subsection (e); and]~~

~~[(4) the initial application fee required under §111.160.]~~

(c) Upgrade from Intern License to Full License. An applicant, who holds a current Texas intern in speech-language pathology license, may upgrade to a speech-language pathology license by submitting:

(1) a completed upgrade application on a department-approved form; and

(2) the required documents under subsection ~~(c)[(b)]~~(2), (5), ~~(7)~~, and (8) ~~[(7) and subsection (e)]~~; and

(3) the initial application fee required under §111.160.

(f) (No change.)

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

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## SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.40 - 111.42, 111.45, 111.47

### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.40. Intern in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Work.*

(a) An individual must [shall] not practice as an intern in speech-language pathology without a current license issued by the department. An applicant for an intern in speech-language pathology license must meet the requirements under the Act and this section.

(b) Education. The graduate degree must [shall] be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.). Programs in candidacy status are considered accredited.

(1) An applicant must have a master's degree in the area of communicative sciences or disorders that verifies the applicant completed the following [Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following]:

(A) at least 36 [thirty-six (36)] semester credit hours must [shall] be in professional course work acceptable toward a graduate degree; and

(B) at least 24 [twenty-four (24)] semester credit hours acceptable toward a graduate degree must [shall] be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology;

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 [thirty-six (36)] hours but not in lieu of the requirements of paragraph (1)(B).

(3) A quarter hour of academic credit must [shall] be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.) stating that the individual completed enough hours to establish a graduate level major in speech-language pathology [and would meet the academic and clinical experience requirements for a license as a speech-language pathologist].

(5) An applicant whose transcript is in a language other than English or whose degree was earned at a foreign university must [shall] submit an [original] evaluation form from an ASHA-approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders.

The applicant must [shall] bear all expenses incurred for the evaluation [during the procedure].

(6) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation must [shall] submit verification [an original signed letter] from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant must [shall] bear all expenses incurred for the verification [during the procedure].

(c) Clinical Work. An applicant must [shall] complete at least 25 [twenty-five (25)] clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993, and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) In the event the course work and clinical experience set out in subsections (b) - (c), were earned more than 10 [ten (10)] years before the date of application for the intern license, the applicant must [shall] submit proof of current knowledge of the practice of speech-language pathology. Proof of current knowledge may include: [recently completing continuing education or other courses; holding a current license in another state; holding a current ASHA certification; or re-taking and passing the written examination.]

(1) completing 10 hours of continuing education or other courses in the last year;

(2) holding a current license in another state; or

(3) taking and passing the written examination in the last year.

(e) An applicant who successfully completed all education and clinical requirements under this section at a college or university accredited by the ASHA Council on Academic Accreditation, but who has not had the degree officially conferred, may be licensed as an intern in order to begin the internship. Verification must be submitted in a form and manner prescribed by the department, [but shall submit verification] from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(f) A person who completed all education and clinical requirements under this section at a college or university that is not accredited by the ASHA Council on Academic Accreditation, or at a foreign college or university, may not apply until the person's master's degree has been officially conferred, as evidenced on the person's transcript.

~~[(f)]~~ An applicant whose master's degree is received at a college or university accredited by the ASHA Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements have been met and review of the transcript shows that the applicant has successfully completed at least twenty-four (24) semester credit hours acceptable toward a graduate degree in the area of speech-language pathology.]

*§111.41. Intern in Speech-Language Pathology License--Internship and Supervision Requirements.*

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

(c) Intern Supervision Plan. An intern must complete the supervised professional experience under an intern supervision plan. This plan must be submitted in a form and manner prescribed by the department.

~~[(c)]~~ [Intern Plan and Agreement of Supervision Form. A Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted in a manner prescribed by the department and completed by both the applicant and the proposed supervisor. The proposed supervisor must meet the requirements set out in the Act and §111.154.]

(1) Approval from the department shall be required prior to practice by the intern and prior to any changes in supervision.

(2) An intern supervision plan must [The Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall] be submitted upon:

(A) application for an intern license; and

(B) any addition, change, or removal of supervisors.  
[changes in supervision; and]

~~[(C) the addition of other supervisors.]~~

(3) ~~[(2)]~~ If more than one speech-language pathologist agrees to supervise the intern, each supervisor must submit an intern supervision plan, in a form and manner prescribed by the department. Each supervisor must add the intern to their license [each proposed supervisor must submit a Speech-Language Pathology Intern Plan and Agreement of Supervision Form].

(4) ~~[(3)]~~ The intern may not practice without an approved supervisor [Speech-Language Pathology Intern Plan and Agreement of Supervision Form]. The supervisor must verify that the intern appears under the supervisor's license before allowing the intern to practice. [The supervisor may not allow an intern to practice before a Speech-Language Pathology Intern Plan and Agreement of Supervision Form is approved.]

(5) ~~[(4)]~~ If the supervisor ceases supervision of the intern, the supervisor must [shall] notify the department, in a form and manner prescribed by the department, and must [shall] inform the intern to stop practicing immediately. The supervisor is responsible for the practice of the intern until the intern is removed from the supervisor's license [notification has been received by the department]. The supervisor is responsible for verifying the removal.

(6) ~~[(5)]~~ If the intern's supervisor ceases supervision, the intern must [shall] stop practicing immediately. The intern may not practice until the intern has a new approved supervisor and has been added to a new supervisor's license [a new Speech-Language Pathology Intern Plan and Agreement of Supervision Form has been submitted to and approved by the department].

(d) Internship Requirements. The internship must [shall]:

(1) be completed within a maximum period of 48 [forty-eight (48)] months once initiated;

(2) be successfully completed after no more than two attempts;

(3) consist of 36 [thirty-six (36)] weeks of full-time supervised professional experience (35 [thirty-five (35)] hours per week) totaling a minimum of 1,260 hours, or its part-time equivalent, of supervised professional experience in which clinical work has been accom-

plished in speech-language pathology. Professional experience of less than five hours per week cannot be used to meet the 36 week minimum or added to the minimum 1,260 hours, but the professional experience still must be completed under an approved supervisor; [supervised by a licensed speech-language pathologist.]

(4) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities; and

(5) be divided into three [(3)] segments with no fewer than 36 ~~(thirty-six (36))~~ clock hours of supervisory activities to include:

(A) six [(6)] hours of direct supervision per segment by the supervisor(s) of the intern's client contact in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six [(6)] hours of indirect supervision per segment with the supervisor(s) which may include correspondence, review of videos, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues. [; or

[(C) an alternative plan as approved by the department.]

(c) Only hours earned under the Texas-licensed, approved supervisor(s) may count toward the internship requirements. Hours earned under a supervisor in another state do not apply toward the 36 week, 1,260 hour minimums required for licensure as a speech-language pathologist. If an intern earned hours in another state in addition to hours earned under a Texas intern license, the intern will need to obtain ASHA CCCs before applying for a speech-language pathologist license and apply under §111.35(b).

[(e) Extension Request. An applicant who does not meet the time frames defined in subsection (d)(1); shall request an extension; in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor in a manner prescribed by the department. Evaluation of the intern's progress of performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted in a manner prescribed by the department. The department shall determine if the internship:]

[(1) should be revised or extended; and]

[(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §111.21 is required.]

(f) Evaluations. During each segment of the internship, each supervisor must [shall] conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for four [three] years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the department upon request.

(g) Reporting Completed Internship Hours.

(1) Each supervisor who supervises an intern must submit a report to the department of the hours and weeks completed under their supervision. This report must be submitted within 30 days of the date the supervision ended and submitted in a form and manner prescribed by the department.

(2) If a supervisor determines that the hours and/or weeks completed under the supervisor's supervision are acceptable, the supervisor must notify the intern and affirm the acceptability of the hours to the department in a form and manner prescribed by the department.

(3) If a supervisor determines that the hours and/or weeks completed under the supervisor's supervision are not acceptable, the supervisor must provide written justification to the department.

(A) This justification must be based on formal evaluation of the intern's progress recorded during each segment of the internship. These formal evaluation records must be provided to the intern at the conclusion of each internship segment.

(B) The justification must be submitted in a form and manner prescribed by the department. A copy of the justification must be provided to the intern upon submission.

(C) The department must review the justification and determine whether to accept the hours and/or weeks submitted. If the department determines the justification is partially or wholly insufficient, the department may affirm some or all the internship hours are acceptable.

(4) If no hours were earned under an approved supervisor, the intern or the approved supervisor must submit a statement, in a form and manner prescribed by the department that no hours were earned and provide the reason. This must be submitted within 30 days of the date the supervision ended.

[(g) Changes in Internship. Prior to implementing changes in the internship, approval from the department is required.]

[(1) If the intern changes the intern's supervisor or adds additional supervisors, a current Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed supervisor and approved by the department before the intern may resume practice as prescribed under subsection (c).]

[(2) If the intern changes the intern's supervisor, the Speech-Language Pathology Report of Completed Internship Form shall be completed by the former supervisor and the intern and submitted to the department upon completion of that portion of the internship. It is the decision of the former supervisor to determine whether the internship is acceptable. The department shall review the form and inform the intern of the results.]

[(3) Each supervisor who ceases supervising an intern shall submit a Speech-Language Pathology Report of Completed Internship Form for the portion of the internship completed under the supervisor's supervision. This must be submitted within thirty (30) days of the date the supervision ended.]

[(4) If no hours were earned under an approved supervisor, the licensed intern or the approved supervisor must submit a signed, written statement that no hours were earned and provide the reason.]

[(5) If the intern changes the intern's employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall notify the department in a manner prescribed by the department of the new location. This must be submitted within thirty (30) days of the date the change occurred.]

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

*§111.42. Intern in Speech-Language Pathology License--Practice and Duties of Interns.*

(a) A licensed intern in speech-language pathology (intern) must obtain supervised professional experience [must perform assigned duties] under the supervision of a licensed speech-language pathologist who has been approved by the department to serve as the intern's supervisor (supervisor).

(b) - (d) (No change.)

(e) If the intern has passed the examination referenced in §111.21 and wishes to continue to practice after the completion of the internship specified in §111.41(d), the intern must ~~[shall]~~ apply for a speech-language pathology license under Subchapter D within 30 days of passing the examination~~;~~ if the intern passed the examination referenced in §111.21.

(f) The intern may continue to practice while awaiting the processing of the speech-language pathology license if the intern meets the following conditions:

(1) holds a valid intern in speech-language pathology license; and

(2) practices under the supervision of the current supervisor and remains under the approved supervisor's license.~~;~~ who filed the Speech-Language Pathology Intern Plan and Agreement of Supervision Form and the Speech-Language Pathology Report of Completed Internship Form; and

~~[(3) practices under the terms of the current Speech-Language Pathology Intern Plan and Agreement of Supervision Form.]~~

*§111.45. Intern in Speech-Language Pathology License--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request ~~[of credentials on department-approved forms]~~.

(b) An applicant for an intern in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) if the graduate degree has been conferred, a ~~[an original or certified]~~ copy of the transcript(s), which shows all relevant coursework, and which shows the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the graduate degree has not been conferred, the university program director or designee of the college or university attended may provide verification that all course work and clinical experience required for graduation has been completed in lieu of a transcript. Course work and clinical experience verification is only accepted from the program director of a college or university accredited by the ASHA Council on Academic Accreditation, and must be submitted in a form and manner prescribed by the department;

(4) ~~[(3)]~~ if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, verification [an original signed letter] from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant must bear all expenses incurred for the verification;

~~[(4) if the graduate degree has not been conferred, the Course Work and Clinical Experience Form completed by the university program director or designee of the college or university attended;]~~

(5) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, an ~~[original]~~ evaluation form from an ASHA-approved transcript evaluation service stating that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders;

(6) an intern supervision plan as prescribed under §111.41 ~~[an Intern Plan and Agreement of Supervision Form completed by the~~

~~proposed supervisor and signed by both the applicant and the proposed supervisor];~~

(7) proof of successfully completing the jurisprudence examination under §111.23; and

(8) the initial application fee required under §111.160.

(c) If not previously submitted when applying for an assistant license, an applicant for an intern in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

*§111.47. Intern in Speech-Language Pathology License--License Terms; Renewals.*

(a) Pursuant to §51.203(b), an intern in speech-language pathology license is valid for one year from the date of issuance and may be renewed annually, up to three times.

(b) Pursuant to §111.41(d)(1), the internship must be completed within a maximum period of 48 months once initiated. Only one speech-language pathology intern license may be issued. The internship must be completed and the examination under §111.21 must be passed within the 48 month period or the speech-language pathology intern will need to apply for a speech-language pathology assistant license.

(c) ~~[(b)]~~ A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(d) ~~[(e)]~~ To renew an intern in speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) complete 10 ~~[ten (10)]~~ hours of continuing education as required under §111.130;

(3) comply with the continuing education audit process described under §111.132, if selected for an audit;

(4) submit an Intern Plan and Agreement of Supervision Form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern must ~~[shall]~~ provide an explanation of the reason for not practicing; and

(5) (No change.)

(e) ~~[(4)]~~ A licensee must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the licensee if the person needs to submit new fingerprints.

(f) ~~[(e)]~~ For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(g) ~~[(f)]~~ The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(h) [(g)] If all conditions required for renewal are met prior to expiration, the department must [~~shall~~] issue a renewed license.

(i) [(h)] A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title

(j) [(i)] A person whose license has expired may not practice or engage in speech-language pathology.

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

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## SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

### 16 TAC §111.50

#### STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed repeal.

*§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience.*

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

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### 16 TAC §§111.50 - 111.52, 111.55

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience.*

(a) An individual must not practice as an assistant in speech-language pathology without a current license issued by the department. An applicant for an assistant in speech-language pathology license must meet the requirement under the Act and this section.

(b) Degree. A degree must be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) An applicant must hold a baccalaureate degree with an emphasis or major in communicative sciences or disorders.

(2) An applicant who holds a baccalaureate degree with a major that is not in communicative sciences or disorders may qualify for the assistant license. The department must evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, which may include some leveling hours.

(3) The transcripts showing the conferred degree must be evaluated as follows:

(A) only course work meeting the requirements of subsection (c) will be acceptable;

(B) a quarter hour of academic credit must be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(4) An applicant whose transcript is in a language other than English or whose degree was earned at a foreign university must submit an evaluation form from an ASHA-approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a baccalaureate degree or higher with a major in one of the areas of communicative sciences or disorders. The applicant must bear all expenses incurred for the evaluation.

(5) An applicant who holds a baccalaureate degree with a major not in communicative sciences or disorders and whose transcript is in a language other than English or whose degree was earned at a foreign university may qualify for the assistant license if the applicant submits documentation in a form and manner prescribed by the department that shows the applicant completed sufficient communicative sciences or disorders academic leveling courses. The academic leveling courses must be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a regional accrediting agency in the United States and approved by the department.

(c) Course Work. The applicant must have acquired at least 24 semester credit hours in communicative sciences or disorders as prescribed by this subsection.

(1) The applicant must have received a grade of "C" or above, or a passing grade if letter grades are not issued by the university, for these semester credit hours.

(2) At least 18 of the 24 semester credit hours must be in speech-language pathology.

(3) At least three of the 24 semester credit hours must be in language disorders.

(A) These courses must cover disorders specific to phonology, morphology, syntax, pre-literacy, and/or language-based literacy skills.

(B) These courses do not include introductory, survey, or overview language courses.

(4) At least three of the 24 semester credit hours must be in speech disorders.

(A) These courses must cover disorders specific to articulation, fluency, resonance and/or voice.

(B) These courses do not include introductory, survey, or overview courses of speech.

(5) A combined language and speech disorders class for three semester hours will not be credited to meet the requirements of both (c)(3) and (c)(4). The class will only be credited toward one of the requirements, but not both.

(6) The 24 semester credit hours excludes course work such as special education, deaf education, or sign language.

(7) The 24 semester credit hours must be academic course work and excludes courses which only offer clinical experience without a classroom component.

(d) Clinical Observation and Experience. The applicant must have earned at least 25 hours of clinical observation in the area of speech-language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology.

(1) These hours must be obtained through an accredited college or university or in one of its cooperating programs. If these hours are not obtained, the applicant must complete the missing hours with the applicant's supervisor upon issuance of the assistant license as prescribed under subsection (e).

(2) An applicant who held an assistant license in another state and completed hours for that license does not need to submit proof of completion of the 25 hours of clinical observation and 25 hours of clinical assisting experience.

(e) An applicant who has not acquired the required hours under subsection (d) must complete the hours under 100% direct supervision by the approved supervisor once the license is issued and before the assistant may begin to practice.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and §111.154, must be the approved supervisor of the assistant, and must have the assistant complete any missing hours under 100% direct supervision before allowing the assistant to practice without 100% direct supervision.

(2) If the assistant changes supervisors before completing the missing clinical observation and clinical assisting experience hours,

the assistant must complete the missing hours under 100% direct supervision by the new supervisor before being allowed to provide services under the assistant license.

(f) In the event the degree, course work, or clinical observation and experience set out in this section were earned more than 10 years before the date of application for the assistant license, the applicant must submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the department. Proof of current knowledge may include: completing at least 10 hours of continuing education or other courses within the last year; or holding a current license in another state.

(g) An assistant may not begin to perform any duties until the license has been issued and all missing clinical observation and clinical assisting experience hours are complete, if applicable.

*§111.51. Assistant in Speech-Language Pathology License--Supervision Requirements.*

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

(c) Assistant Supervision Plan. An assistant must practice under an assistant supervision plan. This plan must be submitted in a form and manner prescribed by the department.

[(e)] [Supervisory Responsibility Statement Form. A Supervisory Responsibility Statement Form shall be submitted in a manner prescribed by the department by both the applicant and the proposed supervisor. The proposed supervisor must meet with the requirements set out in the Act and §111.154.]

(1) Approval from the department must [shall] be required prior to practice by the assistant and prior to any changes in supervision.

(2) An assistant supervision plan must [The Supervisor Responsibility Statement Form shall] be submitted upon:

(A) application for an assistant license; and

(B) any addition, change, or removal of supervisors. [changes in supervision; and]

[(C) the addition of other supervisors.]

(3) [(2)] If more than one speech-language pathologist agrees to supervise the assistant, the assistant must submit an assistant supervision plan for each supervisor, in a form and manner prescribed by the department. Each supervisor must add the assistant to their license [each proposed supervisor must submit a separate Supervisor Responsibility Statement Form in manner prescribed by the department].

(4) [(3)] The assistant may not practice without an approved supervisor [Supervisor Responsibility Statement Form]. The supervisor must verify that the assistant appears under the supervisor's license before allowing the assistant to practice [The supervisor may not allow an assistant to practice before a Supervisor Responsibility Statement Form is approved].

(5) [(4)] The assistant must [shall] only provide services for the caseload of the assistant's current, approved supervisor(s) [who have current Supervisor Responsibility Statement Forms on file with the department].

(6) [(5)] If the supervisor ceases supervision of the assistant, the supervisor must [shall] notify the department, in a form and manner prescribed by the department, and must [shall] inform the assistant to stop practicing immediately. The supervisor is responsible for the practice of the assistant until the assistant is removed from the supervisor's license [notification has been received by the department]. The supervisor is responsible for verifying the removal.

(7) [(6)] If the assistant's supervisor ceases supervision, the assistant must [shall] stop practicing immediately. The assistant may not practice until the assistant has a new approved supervisor and has been added to a new supervisor's license [a new Supervisor Responsibility Statement Form has been submitted to and approved by the department].

(d) The supervisor must [shall] assign duties and provide appropriate supervision to the assistant.

(e) (No change.)

(f) Client Contacts.

(1) Initial contacts directly with the client must [shall] be conducted by the supervisor.

(2) Following the initial contact, the supervisor must [shall] determine whether the assistant has the competence to perform specific duties before delegating tasks.

(g) Amount and Type of Supervision. Each supervisor must [shall] provide a minimum of eight [(8)] hours per calendar month of supervision to the assistant. This subsection applies whether the assistant is employed full-time or part-time.

(1) At least four [(4)] hours must be direct supervision.

(2) The remaining hours may be performed using indirect supervision.

(3) If fewer than four [(4)] weeks are worked in a calendar month, then the number of hours of supervision provided will be based on the number of weeks worked. Two [(2)] hours of supervision must be provided for each week worked, including one [(1)] hour of direct supervision and one [(1)] hour of indirect supervision.

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

(h) Delegating Clinical Tasks.

(1) (No change.)

(2) The supervisor must [shall] ensure that all services are documented and provided in compliance with the Act and this chapter.

(3) The supervisor must [shall]:

(A) in writing, determine the skills and assigned tasks the assistant is able to carry out under §111.52. This document must be agreed upon by the assistant and the supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review it with the assistant who will provide the service; and

(D) maintain responsibility for the services provided by the assistant.

(i) Admission, Review, and Dismissal Meetings. The supervisor, prior to an Admission, Review and Dismissal (ARD) meeting, must [shall]:

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

(j) Records. The supervisor must [shall] maintain the following records.

(1) The supervisor must [shall] maintain for a period of three years supervisory records that verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the department.

(2) The supervisor must [shall] keep job descriptions and performance records of the assistant. Records must [shall] be current and made available upon request to the department.

(k) Supervision Audits. The department may audit a random sampling of assistants for compliance with this section and §111.154.

(1) The department must [shall] notify the assistant and the supervisor in a form and manner prescribed by the department that the assistant has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the supervisor must [shall] provide in a form and manner prescribed by the department the requested proof of compliance to the department.

(3) The assistant and the supervisor must [shall] comply with the department's request for documentation and information concerning compliance with the audit.

(l) (No change.)

*§111.52. Assistant in Speech-Language Pathology License--Practice and Duties of Assistants.*

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

(c) Duties that a supervisor may assign to an assistant, who has received appropriate training, include the following:

(1) - (4) (No change.)

(5) act as translator;

(6) [(5)] administer routine tests if the test developer does not specify a graduate degreed examiner and the supervisor has determined the assistant is competent to perform the test;

(7) [(6)] maintain clinical records;

(8) [(7)] prepare clinical materials;

(9) prepare and create daily notes that do not require a supervisor's signature and are not related to billing;

(10) [(8)] participate with the supervisors' research projects, staff development, public relations programs, or similar activities as designated and supervised by the supervisor; and

(11) [(9)] write lesson plans based on the therapy program developed by the supervisor. The lesson plans must [shall] be reviewed and approved by the supervisor.

(d) The assistant must [shall] not:

(1) - (11) (No change.)

(12) practice as an assistant without an approved supervisor [a current Supervisory Responsibility Statement on file with the department];

(13) - (15) (No change.)

(16) demonstrate feeding or swallowing strategies or precautions to clients, family, or staff;

(17) provide client or family counseling; or

(18) sign any formal document relating to the reimbursement for or the provision of speech-language pathology services without the supervisor's signature. [; or]

[(19) use "SLP-A" or "STA" as indicators for their credentials. Licensees shall use "Assistant SLP" or "SLP Assistant" to shorten their professional title.]

(e) An assistant may represent special education and speech pathology at the Admission, Review, and Dismissal (ARD) meetings with the following stipulations:

(1) The assistant must [shall] have written documentation of approval from the supervisor.

(2) The assistant must [shall] have three years of experience as an assistant in the school setting.

(3) (No change.)

(4) The assistant must [shall] present IEP goals and objectives that have been developed by the supervisor and reviewed with the parent by the supervisor.

(5) The assistant must [shall] discontinue participation in the ARD meeting and shall contact the supervisor when questions or changes arise regarding the IEP document.

(f) (No change.)

(g) Licensed assistants must use "Assistant SLP" or "SLP Assistant" to shorten their professional title. Licensed assistants may not use "SLP-A" or "STA."

(h) Licensed assistants who have earned their ASHA Speech-Language Pathology Assistant certification may use "C-SLP Assistant" in the assistant's title, in addition to Assistant SLP, SLP Assistant, or the full professional title. The "C-SLP Assistant" credential indicator is not a substitute for the use of the "Assistant SLP", "SLP Assistant", or the full professional title.

*§111.55. Assistant in Speech-Language Pathology License--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request [of credentials on department-approved forms].

(b) An applicant for an assistant in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an assistant supervision plan [a completed Supervisory Responsibility Statement Form] as prescribed under §111.51;

(3) a copy [an original or certified copy] of the transcript(s), which shows the 24 semester credit hours of required course work and which shows the applicant possesses a baccalaureate degree with an emphasis in communicative sciences or disorders or a baccalaureate degree that qualifies under §111.50(c);

(4) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, the applicant must submit an evaluation form from an ASHA-approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a baccalaureate degree or higher. The applicant must bear all expenses incurred for the evaluation. If the degree is not in communicative sciences, the applicant must also meet the requirements of §111.50(b)(5);

(5) [(4)] verification of 25 hours of clinical observation and 25 hours of clinical assisting experience from [if not previously submitted, a Clinical Observation and Clinical Experience Form completed by] the university program director or designee of the college or university training program showing [verifying] the applicant completed the requirements set out in §111.50(d), if any hours were earned [§111.50(a)(3)];

(6) [(5)] for an applicant who did not obtain the hours referenced in paragraph (5) [(4)], the missing hours must be completed under direct supervision by the approved supervisor upon license issuance [a Clinical Deficiency Plan Form to obtain the hours lacking];

(7) [(6)] proof of successfully completing the jurisprudence examination under §111.23; and

(8) [(7)] the initial application fee required under §111.160.

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

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

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## SUBCHAPTER H. REQUIREMENTS FOR AUDIOLOGY LICENSE

### 16 TAC §111.70, §111.75

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.70. Audiology License--Licensing Requirements.*

(a) An individual must [shall] not practice as an audiologist without a current license issued by the department. An applicant for the audiology license must [shall] meet the requirements set out in the Act and this section.

(b) (No change.)

(c) An applicant whose transcript is in a language other than English or whose degree was earned at a foreign university must [shall] submit an [original] evaluation form from an ASHA-approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a doctoral degree in audiology or a related hearing science. The applicant must [shall] bear all expenses incurred for the evaluation [during the procedure].

(d) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) must [shall] have the ASHA Council for Clinical Certification evaluate the course work to determine whether the applicant



qualified for the Certificate of Clinical Competence. The applicant must [shall] bear all expenses incurred for the verification [during the procedure].

(c) Examination. An applicant must [shall] pass the examination referenced under §111.21.

[(f) An applicant who previously held the ASHA Certificate of Clinical Competence or the ABA Certification may have the certificate reinstated and apply for licensure under §111.75(d).]

§111.75. Audiology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request.

(b) An applicant for an audiology license who holds or has held the ASHA Certification of Clinical Competence (ASHA CCC) or ABA Certification may apply by submitting the following required documentation:

(1) a completed application on a department-approved form;

(2) verification of holding a current or expired ASHA CCC or ABA Certification, which demonstrates that the applicant has met the education, supervised professional experience, and written examination requirements for the license;

(3) proof of current knowledge, which may include completing at least 10 hours of continuing education or other courses within the last year or holding a current license in another state;

(4) proof of successfully completing the jurisprudence examination under §111.23;

(5) the initial application fee required under §111.160.

(c) An applicant for an audiology license who has never held an ASHA CCC or ABA Certification must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) a copy of the transcript(s), which shows the conferred doctoral degree in audiology or a related hearing science;

(3) if the degree was not earned at an institution as described in §111.70(b), verification from the ASHA Council for Clinical Certification that the conferred doctoral degree is adequate for ASHA Certification or from the ABA that the conferred doctoral degree is adequate for ABA Certification;

(4) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, an evaluation from an ASHA-approved transcript evaluation service stating that the applicant's degree is a doctoral degree in audiology or a related hearing science;

(5) if the applicant currently holds a Texas intern in audiology license, proof of completion of an internship, in a form and manner prescribed by the department;

(6) a copy of the Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(7) proof of successfully completing the jurisprudence examination under §111.23; and

(8) the initial application fee required under §111.160.

(d) If not previously submitted when applying for an assistant or intern license, an applicant for an audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Texas Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(e) Upgrade from Intern License to Full License. An applicant, who holds a current Texas intern in audiology license, may upgrade to an audiology license by submitting:

(1) a completed upgrade application on a department-approved form;

(2) the required documents under subsection (c)(2), (5), (6), and (7); and

(3) the initial application fee required under §111.160.

(f) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

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## 16 TAC §111.75

### STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed repeal.

§111.75. Audiology License--Application and Eligibility Requirements.

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

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**SUBCHAPTER I. REQUIREMENTS FOR  
INTERN IN AUDIOLOGY LICENSE**

**16 TAC §§111.80 - 111.82, 111.85, 111.87**

**STATUTORY AUTHORITY**

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.80. Intern in Audiology License--Licensing Requirements--Education.*

(a) An individual must [shall] not practice as an intern in audiology without a current license issued by the department. An applicant for the intern in audiology license must [shall] meet the requirements set out in the Act and this section.

(b) Education. The individual must be enrolled in a doctoral degree program in audiology or a related hearing science [shall be obtained] at a college or university that has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.). Programs in candidacy status are considered accredited.

(c) An individual [applicant] who is enrolled in [graduated from] a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) must [shall] have the ASHA Council for Clinical Certification evaluate the course work to determine whether the applicant qualified for the Certificate of Clinical Competence. The applicant must [shall] bear all expenses incurred during the procedure.

[(d) The applicant shall submit the department prescribed form signed by the university program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the department.]

*§111.81. Intern in Audiology License--Internship and Supervision Requirements.*

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

(c) Intern Supervision Plan. An intern must complete the supervised professional experience under an intern supervision plan. This plan must be submitted in a form and manner prescribed by the department.

[(e)] [Intern Plan and Agreement of Supervision Form. An Audiology Intern Plan and Agreement of Supervision Form shall be submitted in a manner prescribed by the department and completed by both the applicant and the proposed supervisor. The proposed supervisor must meet the requirements set out in the Act and §111.154.]

(1) Approval [Written approval] from the department must [shall] be required prior to practice by the intern and prior to any changes in supervision [in audiology]. [The Audiology Intern Plan and Agreement of Supervision Form shall be submitted upon:]

[(A) application for an intern license;]

[(B) any changes in supervision; and]

[(C) the addition of other supervisors.]

(2) An intern supervision plan must be submitted upon:

(A) application for an intern license; and

(B) any addition, change, or removal of supervisors.

(3) [(2)] If more than one audiologist agrees to supervise the intern, each supervisor must submit an intern supervision plan in a form and manner prescribed by the department. Each supervisor must add the intern to their license [each proposed supervisor must submit an Audiology Intern Plan and Agreement of Supervision Form].

(4) [(3)] The intern may not practice without an approved supervisor [Audiology Intern Plan and Agreement of Supervision Form]. The supervisor must verify that the intern appears under the supervisor's license before allowing the intern to practice Audiology. [The supervisor may not allow an intern to practice before an Audiology Intern Plan and Agreement of Supervision Form is approved.]

(5) [(4)] If the supervisor ceases supervision of the intern, the supervisor must [shall] notify the department, in a form and manner prescribed by the department, and must [shall] inform the intern to stop practicing immediately. The supervisor is responsible for the practice of the intern until the intern is removed from the supervisor's license [notification has been received by the department]. The supervisor is responsible for verifying the removal.

(6) [(5)] If the intern's supervisor ceases supervision, the intern must [shall] stop practicing immediately. The intern may not practice until the intern has a new approved supervisor and has been added to a new supervisor's license [a new Audiology Intern Plan and Agreement of Supervision Form has been submitted to and approved by the department].

(d) Internship Requirements. The internship must [shall]:

(1) begin after completion of all academic course work under §111.80; and

[(2) consist of 1,600 hours of supervised clinical work as defined in paragraph (3); and]

(2) [(3)] consist of supervised professional experience involving [involve] primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals conducted under the direction of a professionally recognized accredited doctoral program as approved by the department.

[(e) Changes in Internship. Prior to implementing changes in the internship, written approval from the department is required.]

[(f) If the intern changes the intern's supervisor or adds additional supervisors, a current Audiology Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed supervisor

and approved by the department before the intern may resume practice as prescribed under subsection (c).]

[(2) If the intern changes the intern's supervisor, the Audiology Report of Completed Internship Form shall be completed by the former supervisor and the intern and submitted to the department upon completion of that portion of the internship. It is the decision of the former supervisor to determine whether the internship meets the department's requirements. The department shall review the form and inform the intern of the results.]

[(3) A supervisor who ceases supervising an intern shall submit an Audiology Report of Completed Internship Form for the portion of the internship completed under the supervisor's supervision. This must be submitted within 30 days of the date the supervision ended.]

[(4) If no hours were earned under an approved supervisor, the licensed intern or the approved supervisor must submit a signed, written statement that no hours were earned and provide the reason.]

[(5) If the intern changes the intern's employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement or submit in a manner prescribed by the department giving the name, address and phone number of the new location. This must be submitted within thirty (30) days of the date the change occurred.]

(c) [(f)] Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

*§111.82. Intern in Audiology License--Practice and Duties of Interns.*

(a) A licensed intern in audiology (intern) must obtain supervised professional experience [~~perform assigned duties~~] under the supervision of a licensed audiologist who has been approved by the department to serve as the intern's supervisor (supervisor).

(b) (No change.)

(c) The intern may continue to practice while awaiting the processing of the audiology license if the intern meets the following conditions:

(1) holds a valid intern in audiology license; and

(2) practices under the supervision of the current supervisor. [~~who filed the Audiology Intern Plan and Agreement of Supervision Form and the Report of Completed Internship in Audiology; and~~]

[(3) practices under the terms of the current Audiology Intern Plan and Agreement of Supervision Form].

*§111.85. Intern in Audiology License--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request. [~~on department-approved forms.~~]

(b) An applicant for an intern in audiology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) verification from the university program director or designee of the college or university stating that the applicant is enrolled in a professionally recognized accredited doctoral program as approved

by the department and that the applicant has completed all required academic and clinical course work;

(3) an intern supervision plan submitted in a form and manner prescribed by the department;

[(2) a Course Work and Clinical Experience Form for Audiology Intern completed by the university program director or designee of the college or university attended which verifies the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the department, and has completed all required academic and clinical course work;]

[(3) an Intern Plan and Agreement of Supervision Form completed by the proposed supervisor and signed by both the applicant and the proposed supervisor;]

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

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

*§111.87. Intern in Audiology License--License Terms; Renewals.*

(a) An intern in audiology license is valid for two years from the date of issuance and may be renewed biennially.

[(a) Pursuant to §51.203(b), an intern in audiology license is valid for one year from the date of issuance and may be renewed annually.]

(b) (No change.)

(c) To renew an intern in audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) submit an intern supervision plan [~~Intern Plan and Agreement of Supervision Form~~] for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern must [~~shall~~] provide an explanation of the reason for not practicing; and

(3) (No change.)

(d) - (i) (No change.)

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

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## SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE

### 16 TAC §§111.90 - 111.92, 111.95

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.90. Assistant in Audiology License--Licensing Requirements--Education and Training.*

(a) An individual must ~~[shall]~~ not practice as an assistant in audiology without a current license issued by the department. An applicant for an assistant in audiology license must ~~[shall]~~ meet the requirements set out in the Act and this section.

(b) An assistant in audiology must ~~[shall]~~ meet the following requirements:

(1) reach the minimum age of 18 years old and possess a high school diploma or equivalent;

(2) complete the approved 20-hour certification course from the Council for Accreditation of Occupational Hearing Conservation (CAOHC) and earn a passing score on the examination;

(3) if the applicant holds a baccalaureate ~~[bachelor's]~~ degree or higher in communicative sciences or disorders, the applicant does not need to complete the certification course and examination under subsection (b)(2);

(4) work under an approved supervisor and an assistant supervision plan approved by the department ~~[submit the Supervisory Responsibility Statement for an Assistant in Audiology Form prescribed]~~ under §111.91; and

(5) agree ~~[submit a plan]~~ to complete a minimum of 25 ~~[twenty-five (25)]~~ hours of job-specific competency-based training to be carried out by the supervisor upon initial issuance of license; and ~~[Until this training is complete, the licensed assistant in audiology may practice only under in-person, direct supervision by the supervisor.]~~

(6) complete all training hours under the supervision of an approved supervisor.

(c) An assistant may not begin to practice until all supervised training hours are complete and the license has been issued, if applicable.

~~[(e) Upon satisfactory completion of job-specific competency-based training under subsection (b)(5), the supervisor shall submit the Report of Completed Training for an Assistant in Audiology Form on behalf of the licensed assistant in audiology. After the department approves the report, the licensed assistant may practice only in compliance with the supervision requirements under §111.91 and §111.92.]~~

*§111.91. Assistant in Audiology License--Supervision Requirements.*

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

(c) A supervisor must ensure all training hours completed by the assistant are supervised.

~~[(e) [Supervisory Responsibility Statement Form. A Supervisory Responsibility Statement Form shall be submitted in a manner prescribed by the department by both the applicant and the proposed supervisor. The proposed supervisor must meet the requirements set out in the Act and §111.154.]~~

(1) Approval from the department must ~~[shall]~~ be required prior to practice by the ~~[licensed]~~ assistant and prior to any changes in supervision. [in audiology. The Supervisory Responsibility Statement for an Assistant in Audiology Form shall be submitted upon:]

~~[(A) application for a license;]~~

~~[(B) any changes in supervision; and]~~

~~[(C) addition of other supervisors.]~~

(2) An assistant supervision plan must be submitted upon:

(A) application for an assistant license; and

(B) any addition, change, or removal of supervisors.

(3) ~~[(2)]~~ If more than one audiologist agrees to supervise the assistant, each supervisor must submit an assistant supervision plan, in a form and manner prescribed by the department. Each supervisor must add the assistant to their license ~~[proposed supervisor must submit a separate Supervisory Responsibility Statement Form in a manner prescribed by the department].~~

(4) ~~[(3)]~~ The assistant may not practice without an approved supervisor [Supervisor Responsibility Statement Form]. The supervisor must verify that the assistant appears under the supervisor's license before allowing the assistant to practice ~~[The supervisor may not allow an assistant to practice before a Supervisor Responsibility Statement Form is approved].~~

(5) ~~[(4)]~~ The assistant must ~~[shall]~~ only provide services for the clients ~~[the caseload]~~ of the assistant's current, approved supervisors [who have current Supervisor Responsibility Statement Forms on file with the department].

(6) ~~[(5)]~~ If the supervisor ceases supervision of the assistant, the supervisor must ~~[shall]~~ notify the department, in a form and manner prescribed by the department, and must ~~[shall]~~ inform the assistant to stop practicing immediately. The supervisor is responsible for the practice of the assistant until the assistant is removed from the supervisor's license ~~[notification has been received by the department].~~ The supervisor is responsible for verifying the removal.

(7) ~~[(6)]~~ If the assistant's supervisor ceases supervision, the assistant must ~~[shall]~~ stop practicing immediately. The assistant may not practice until the assistant has a new approved supervisor and has been added to a new supervisor's license [a new Supervisor Responsibility Statement Form has been submitted to and approved by the department].

(d) Assistant Supervision Plan. An assistant must practice under an assistant supervision plan. This plan must be submitted in a form and manner prescribed by the department.

(e) ~~[(d)]~~ A supervisor must ~~[shall]~~ assign duties and provide appropriate supervision to the assistant.

(f) ~~[(e)]~~ Client Contacts.

(1) All diagnostic contacts must ~~[shall]~~ be conducted by the supervisor.

(2) Following the initial diagnostic contact, the supervisor must ~~[shall]~~ determine whether the assistant has the competence to perform specific non-diagnostic and non-prohibited duties before delegating tasks as referenced in §111.92(c).

(g) ~~[(f)]~~ Amount and Type of Supervision. Each supervisor must provide a minimum of four ~~[ten (10)]~~ hours per week, or ~~[sixteen (40)]~~ ~~[forty (40)]~~ hours per calendar month, of supervision to the assistant. This subsection applies whether the assistant is employed full-time or part-time.

(1) At least one ~~[(4)]~~ hour per week, or four ~~[(4)]~~ hours per calendar month, must be direct supervision.

(2) The remaining hours may be performed using indirect supervision.

(3) If fewer than four ~~[(4)]~~ weeks are worked in a calendar month, then the number of hours of supervision provided will be based on the number of weeks worked. Four ~~[Ten (10)]~~ hours of supervision must be provided for each week worked, including one ~~[(4)]~~ hour of direct supervision.

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

(h) ~~[(g)]~~ Delegating Clinical Tasks.

(1) Although the supervisor may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated.

(2) The supervisor must ~~[shall]~~ ensure that all services are documented and provided in compliance with the Act and this chapter.

(3) The supervisor must ~~[shall]~~:

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

(i) ~~[(h)]~~ Records. The supervisor must ~~[shall]~~ maintain the following records.

(1) Supervisory records must ~~[shall]~~ be maintained by the supervisor for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the department.

(2) The supervisor must ~~[shall]~~ keep job descriptions and performance records. Records must ~~[shall]~~ be current and be made available upon request to the department.

(j) ~~[(i)]~~ Supervision Audits. The department may audit a random sampling of assistants for compliance with this section and §111.154.

(1) The department must ~~[shall]~~ notify an assistant and the supervisor in a form and manner prescribed by the department that the assistant has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the supervisor, who agreed to accept responsibility for the services provided by the assistant, must ~~[shall]~~ provide the requested proof of compliance to the department in a form and manner prescribed by the department.

(3) The assistant and the supervisor must ~~[shall]~~ comply with the department's request for documentation and information concerning compliance with the audit.

(k) ~~[(j)]~~ Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

*§111.92. Assistant in Audiology License--Practice and Duties of Assistants.*

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

(d) The assistant must ~~[shall]~~ not:

(1) - (17) (No change.)

(18) practice as an assistant without an approved supervisor ~~[a valid Supervisory Responsibility Statement for an Audiology Assistant Form on file with the department]~~.

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

*§111.95. Assistant in Audiology License--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request. ~~[on department-approved forms.]~~

(b) An applicant for an assistant in audiology license must submit the following required documentation:

(1) (No change.)

(2) an assistant supervision plan ~~[a completed Supervisory Responsibility Statement Form]~~ as prescribed under §111.91;

(3) (No change.)

(4) copy of high school diploma or equivalent;

(5) a ~~[an original or certified]~~ copy of the Council for Accreditation of Occupational Hearing Conservation (CAOHC) certificate indicating that the applicant has completed the required CAOHC training and passed the required examination;

(6) if the applicant holds a baccalaureate ~~[bachelor's]~~ degree or higher in communicative sciences or disorders, submit proof of degree instead of the high school diploma under subsection (b)(4) and the certificate under subsection (b)(5);

(7) proof of successfully completing the jurisprudence examination under §111.23; and

(8) (No change.)

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

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

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## SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

### 16 TAC §111.115

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No

other statutes, articles, or codes are affected by the proposed rules.

*§111.115. Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation in a form and manner prescribed by the department. Original or certified copies of documentation must be submitted to the department upon request. ~~[of credentials on department-approved forms.]~~

(b) - (c) (No change.)

(d) An applicant who holds or has held the ASHA CCC or ABA Certification [that qualifies for a waiver under §111.35 or §111.75] must submit the certification [waiver] documentation required under §111.35 and §111.75 [those two sections].

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

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## SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

### 16 TAC §111.150, §111.154

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.150. Changes of Name, Address, or Other Information.*

(a) A licensee must [is required to] provide a current name, address, contact telephone number, and valid email address [telephone number, and employment information]. The licensee must [shall] notify the department of any changes within 30 [thirty (30)] days of such changes on a department-approved form or using a department-approved method [in a form and manner prescribed by the department].

(b) (No change.)

(c) To receive a duplicate license, the licensee must [shall] submit the duplicate/replacement fee required under §111.160.

*§111.154. Supervision Requirements[, Duties,] and Responsibilities [of Supervisors and Persons Being Supervised].*

(a) A licensee who wants to supervise an intern or assistant must meet the requirements under this section and be approved by the department.

~~[(a) A licensee must have two years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. One year of the licensee's internship shall be counted toward the two years of experience.]~~

(b) Experience. A licensee must have at least two years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant.

(1) One year of the licensee's internship may be counted toward the two years of experience.

(2) The professional experience may have been obtained under a license in another state.

~~[(b) A licensee may not supervise an individual that is related to the licensee within the first degree of consanguinity, as determined under Government Code, Chapter 573, Subchapter B.]~~

(c) License Type. A licensee must hold the appropriate license type to supervise.

(1) ~~[(e)]~~ A supervisor of an intern in speech-language pathology must be a licensed speech-language pathologist ~~[who is approved by the department and]~~ who possesses at least a master's degree with a major in one of the areas of communicative sciences or disorders.

(2) ~~[(d)]~~ A supervisor of an assistant in speech-language pathology must be a licensed speech-language pathologist ~~[who is approved by the department].~~

(3) ~~[(e)]~~ A supervisor of an intern in audiology or an assistant in audiology must be a licensed audiologist ~~[who is approved by the department].~~

(d) Conflicts. A licensee may not supervise an individual who is related to the licensee within the first degree of consanguinity, as determined under Government Code, Chapter 573, Subchapter B.

(e) License Sanctions. A licensee may not supervise if the licensee has any current sanctions attached to the licensee's license (suspension, probated suspension, revocation, probated revocation, or any other license restrictions, terms, or conditions).

(f) Supervisor Responsibilities. A supervisor of an intern or assistant must [shall]:

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

(3) provide appropriate supervision after the department approves the intern or assistant supervision plan [supervisory agreement]; and

(4) comply with the following:

(A) supervise no more than a total of four ~~[(4)]~~ speech-language pathology interns and/or assistants; or

(B) supervise no more than a total of four ~~[(4)]~~ audiology interns and/or assistants.

(g) Additional Supervisor Responsibilities. In addition to the provisions listed in subsection ~~(h) [(f)]~~, a supervisor of an assistant must [shall]:

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

(h) Intern and Assistant Responsibilities. A licensed intern or assistant must [shaH] abide by the decisions made by the supervisor relating to the intern's or assistant's practice and duties. If the supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant must [shaH] refuse to do so and immediately notify the department and any other appropriate authority.

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

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## SUBCHAPTER Q. FEES

### 16 TAC §111.160

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

*§111.160. Fees.*

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

(f) Intern in Audiology License:

(1) Initial application fee (includes two-year [~~one-year~~] initial license)--\$75.

(2) Renewal application fee (for two-year [~~one-year~~] license)--\$75.

(g) - (m) (No change.)

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

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## TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS

#### SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING LOCAL DISTRICT OPERATIONS

#### 19 TAC §67.1501, §67.1502

The Texas Education Agency (TEA) proposes new §67.1501 and §67.1502, concerning local district operations related to instructional materials. The proposed new sections would outline the process for school districts and open-enrollment charter schools to submit requests for reviews of local classroom instructional materials and establish eligibility for reviewers.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised Texas Education Code (TEC), Chapter 31, Instructional Materials and Technology, including adding a provision for local reviews of classroom instructional materials.

TEC, §31.0252, Local Review of Classroom Instructional Materials, requires that TEA develop standards in consultation with stakeholders, including educators, by which a school district is authorized to conduct a review of instructional materials used by a classroom teacher in a foundation curriculum course under TEC, §28.002(a)(1), to determine the degree to which the material corresponds with the instructional materials adopted by the school district or campus and meets the level of rigor of the knowledge and skills adopted under TEC, §28.002, for the grade level in which it is being used.

Proposed new §67.1501, District Request for Review of Local Classroom Instructional Materials, would clarify the conditions under which TEA would conduct a review of local classroom instructional materials requested by a school district or open-enrollment charter school.

New subsection (a) would specify the rule's application to school districts and open-enrollment charter schools.

New subsection (b) would establish a request process and statewide submission window beginning September 1. Additionally, the subsection would outline how the review process would be customized to evaluate the specific types of instructional materials chosen by the school district, specify that the results will be shared in a written report, and establish how grant funds will be prioritized.

New subsection (c) would require that reviews and rubric development for foundation curriculum courses be aligned with the instructional materials review and approval process rubric development schedule and review cycles.

New subsection (d) would require school districts and open-enrollment charter schools to establish data management processes and track certain information related to requests for review.

New subsection (e) would require school districts to publish review reports on their websites.

Proposed new §67.1502, Reviewer Eligibility, would establish that reviews will be conducted by education service centers or a curriculum review service provider approved by TEA and that all reviewers must meet TEA eligibility criteria. The new section

would also prohibit reviewers from having a financial interest in instructional materials adoption or accepting gifts or other items from certain individuals.

**FISCAL IMPACT:** Megha Kansra, associate commissioner of district planning and supports, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to establish a process for reviews of local classroom instructional materials and the eligibility for reviewers.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Kansra has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to outline the process for school districts and open-enrollment charters to submit review requests and the eligibility for reviewers. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would require a cover page document to be completed by a principal or classroom teacher. However, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. The teacher would complete a form to specify the assignment source; the text, title, and author (if applicable); the daily student learning objective; and the primary Texas Essential Knowledge and Skills addressed by the assignments in the collection.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 6, 2025, and ends July 7, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 6, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The new sections are proposed under Texas Education Code (TEC), §26.0061, as added by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires the board of trustees of each school district to establish a process by which a parent may request an instructional material review under TEC, §31.0252, for a subject area in the grade level in which the parent's student is enrolled; TEC, §31.003(b), as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which allows the commissioner to adopt rules consistent with TEC, Chapter 31, as necessary to implement a provision of the chapter that the commissioner or agency is responsible for; TEC, §31.0205, which states that an open-enrollment charter school is subject to TEC, Chapter 31, as if the charter school were a school district; and TEC, §31.0252, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the Texas Education Agency (TEA) to develop a rubric, approved by the State Board of Education, to determine if reviewed instructional material complies with the rigor requirements described by TEC, §31.0252(a)(2).

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code (TEC), §26.0061, as added by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; §31.003(b), as added by HB 1605, 88th Texas Legislature, Regular Session, 2023; §31.0205; and §31.0252, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

§67.1501. District Request for Review of Local Classroom Instructional Materials.

(a) For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(b) A school district may request a review by the Texas Education Agency (TEA) of local classroom instructional materials.

(1) A request for a review of local classroom instructional materials must be submitted between September 1 and the last instructional day for students.

(2) If a review of local classroom instructional materials is granted, the school district must submit blank student assignments and other required instructional materials.

(3) TEA will evaluate requests according to the type of materials adopted by the school district.

(A) A school district using instructional materials not reviewed by the instructional materials review and approval (IMRA) process will receive a review of local classroom instructional materials focused on the degree to which the materials meet the rigor of the Texas Essential Knowledge and Skills and align with the instructional materials adopted by the district.

(B) A school district using materials on the State Board of Education (SBOE)-approved instructional materials list will receive a review of local classroom instructional materials to determine align-



ment with the instructional materials adopted by the district, as the rigor of the materials has already been reviewed and approved by the SBOE.

(4) A request for the review of materials on the SBOE's rejected instructional materials list will be automatically denied, and the requesting school district will receive the IMRA report for those materials.

(5) TEA will provide the results from a review of local classroom instructional materials in a local classroom review report to the school district.

(6) TEA will use grant funds to cover the costs of approved reviews in accordance with the following requirements.

(A) School district requests for parent-initiated reviews of local classroom instructional materials will be prioritized and conducted as grant funding is available.

(B) School district requests for districtwide reviews of local classroom instructional materials will be conducted if grant funds are available. Once grant funds are exhausted, districts may continue to submit districtwide requests with the option to use local funds to conduct the reviews.

(c) Local classroom instructional materials reviews and rubric development for foundations curriculum courses will be aligned with the IMRA rubric development schedule and review cycles.

(d) School districts must establish data management processes to ensure reviews of local classroom instructional materials are authorized no more than once per year for any classroom teacher in a specific subject or grade level at a specific campus. The process must track, at a minimum, the teacher of record, date of the review request, grade level, content area, campus, and amount of time the teacher reports to complete the request.

(e) School districts must publish local classroom instructional materials review reports from TEA on the district website within 10 school days following the receipt of the results. These reports must be accessible to the public without requiring a login or password. Prior to publication on the district website, the district must redact any student or teacher information from the report and must not make any other modifications to the report.

#### §67.1502. Reviewer Eligibility.

(a) Local classroom reviews shall be conducted by education service centers or a curriculum review service provider approved by the Texas Education Agency (TEA). All reviewers must meet eligibility criteria approved by TEA.

(b) Reviewers may not have a financial interest in or be employed by a publisher or any person or entity with a financial interest in the adoption of instructional materials in the previous three years.

(c) Reviewers of local classroom instructional materials shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the evaluations of the reviews.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 76. EXTRACURRICULAR ACTIVITIES

### SUBCHAPTER AA. COMMISSIONER'S RULES

#### 19 TAC §76.1001

The Texas Education Agency (TEA) proposes an amendment to §76.1001, concerning extracurricular activities. The proposed amendment would increase the number of activities in which a student may participate from one activity to two activities per school week.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §7.055(b)(41), requires the commissioner of education to adopt rules relating to extracurricular activities under TEC, §33.081, which limits the participation in and practice for extracurricular activities during the school day and the school week and establishes the parameters for and exemptions of student participation in an extracurricular activity or a University Interscholastic League competition.

Section 76.1001(d) establishes limitations on participation in and practice for extracurricular activities during the school day and school week.

Currently, students are limited to participating in no more than one extracurricular activity per school week, excluding holidays. There are exceptions for tournaments or post-district contests, as well as contests postponed by weather or public disaster that may determine advancement to a post-district level of competition. TEA received a request to change the rule to allow students to participate in up to two activities per school week, and the request was approved. The proposed amendment would allow students to participate in up to two activities per school week with the listed exceptions.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by allowing students to participate in more extracurricular activities during the school week.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide districts with additional flexibility in scheduling extracurricular activities by allowing students to participate in up to two activities per school week. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 6, 2025, and ends July 7, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 6, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.055(b)(41), which requires the commissioner of education to adopt rules relating to extracurricular activities under TEC, §33.081, which limits the participation in and practice for extracurricular activities during the school day and the school week and establishes the parameters and exemptions of student participation in an extracurricular activity or a University Interscholastic League competition as they relate to student grades.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.055(b)(41).

§76.1001. *Extracurricular Activities.*

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

(d) Limitations on practice, rehearsal, and student participation in extracurricular activities during the school week shall be as follows.

(1) For any given extracurricular activity, a student may not participate in more than two activities [~~one activity~~] per school week, excluding holidays, except as provided in paragraph (2) of this subsection.

(2) In addition to the limit specified in paragraph (1) of this subsection of ~~two~~ [~~one~~] extracurricular activities [~~activity~~] permitted per school week, a student may also participate in a tournament or post-district contest, as well as a contest postponed by weather or public disaster that may determine advancement to a post-district level of competition.

(3) - (4) (No change.)

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

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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## TITLE 22. EXAMINING BOARDS

### PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

#### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

**22 TAC §§153.9, 153.16, 153.17, 153.19, 153.21, 153.22,  
153.24, 153.25**

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.9, Applications, §153.16, License Reinstatement, §153.17, License Renewal, §153.19, Licensing for Persons with Criminal History and Fitness Determination, §153.21, Appraiser Trainees and Supervisory Appraisers, §153.22, Volunteer Appraiser Experience Reviews, §153.24, Complaint Processing, and §153.25, Temporary Out-of-State Appraiser License.

The proposed amendments to Chapter 153 are made following TALCB's quadrennial rule review for this Chapter. The proposed change is made as a result of the agency's license management system project. Because of this project, users will be able to provide information to the agency through an online process, rather than by submitting a paper form. As a result, the rule language is clarified to reflect this change.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect,

there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be greater clarity and consistency in the rules.

#### Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related certifying or licensing an appraiser or appraiser trainee and qualifying education and experience required for certifying or licensing an appraiser or appraiser trainee that are consistent with applicable federal law and guidelines recognized by the Appraiser Qualifications Board (AQB); §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

#### §153.9. Applications.

(a) A person desiring to be licensed as an appraiser or appraiser trainee shall file an application using a process acceptable to the Board [forms prescribed by the Board or the Board's online application system, if available]. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by

the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

- (1) paid the required fees;
- (2) submitted a complete and legible set of fingerprints as required in §153.12 of this title (relating to Criminal History Checks);
- (3) satisfied any experience and education requirements established by the Act, Board rules, and the AQB;
- (4) successfully completed any qualifying examination prescribed by the Board;
- (5) provided all supporting documentation or information requested by the Board in connection with the application;
- (6) satisfied all unresolved enforcement matters and requirements with the Board; and
- (7) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Termination of application. An application is subject to no further evaluation or processing if within one year from the date an application is filed, an applicant fails to satisfy:

- (1) a current education, experience or exam requirement;
- or
- (2) the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to License Renewal).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within two years after the date of the Board's notice of denial as required in §157.7 of this title (Denial of a License, Renewal or Reinstatement; Adverse Action Against a License Holder).

#### §153.16. License Reinstatement.

- (a) Subsections (a) - (f) apply only to a person who:
- (1) previously held a residential appraiser license or certification or general appraiser certification issued by the Board that has been expired for more than six months; and
  - (2) seeks to obtain the same level of appraiser license previously held by the person before its expiration.
- (b) A person who seeks to reinstate a license expired less than five years must:
- (1) submit an application for reinstatement using a process acceptable to [on a form approved by] the Board;
  - (2) pay the required fee;
  - (3) satisfy the Board as to the person's honesty, trustworthiness and integrity;
  - (4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title; and

(5) complete all AQB continuing education requirements that would have been required had the license not expired.

(c) A person who seeks to reinstate a license expired five years or more must:

(1) satisfy the requirements of subsection (b); and

(2) submit an experience log demonstrating his or her experience complies with USPAP, as outlined in subsection (d).

(d) An experience log submitted under subsection (c) must include at least 10 appraisals of a property type accepted by the AQB for the applicable license category, completed within 5 years from the date of application under this section.

(e) Unless otherwise provided in this section, the board will verify and award experience submitted under subsection (d) in accordance with §153.15 of this title (relating to Experience Required for Licensing).

(f) If a person who seeks to reinstate a license under subsection (c) is unable to submit appraisals or supporting documentation for verification, he or she may apply for a license as an appraiser trainee for the purposes of acquiring the appraisal experience required for reinstatement.

(g) Subsections (g) - (h) apply only to a person who previously held a trainee license issued by the Board that has been expired for more than six months and seeks to reinstate the trainee license.

(h) A person who seeks to reinstate a trainee license must:

(1) submit an application for reinstatement on a form approved by the Board;

(2) pay the required fee;

(3) satisfy the Board as to the person's honesty, trustworthiness and integrity;

(4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title; and

(5) complete all AQB continuing education requirements that would have been required had the license not expired.

#### §153.17. License Renewal.

(a) General Provisions.

(1) The Board will send a renewal notice to the license holder at least 90 days prior to the expiration of the license. It is the responsibility of the license holder to apply for renewal in accordance with this chapter, and failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(2) A license holder renews the license by timely filing an application for renewal using a process acceptable to the Board, paying the appropriate fees to the Board, and satisfying all applicable education, experience, fingerprint and criminal history check requirements.

~~{(3) An application for renewal received by the Board is timely and acceptable for processing if it is:}~~

~~{(A) complete;}~~

~~{(B) accompanied with payment of the required fees; and}~~

~~{(C) postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or accepted by the Board's online processing system on or before the date of expiration.}~~

(b) ACE Extensions.

(1) The Board may grant, at the time it issues a license renewal, an extension of time of up to 60 days after the expiration date of the previous license to complete ACE required to renew a license, subject to the following:

(A) The license holder must:

(i) timely submit the completed renewal application using a process acceptable to the Board ~~[form]~~;

(ii) complete an extension request using a process acceptable to the Board ~~[form]~~; and

(iii) pay the required renewal and extension fees.

(B) ACE courses completed during the 60-day extension period apply only to the current renewal and may not be applied to any subsequent renewal of the license.

(C) A person whose license was renewed with a 60-day ACE extension:

(i) will be designated as non-AQB compliant on the National Registry and will not perform appraisals in a federally related transaction until verification is received by the Board that the ACE requirements have been met;

(ii) may continue to perform appraisals in non-federally related transactions under the renewed license;

(iii) must, within 60 days after the date of expiration of the previous license, ~~[complete the approved ACE report form and]~~ submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record; and

(iv) will have the renewed license placed in inactive status if, within 60 days of the previous expiration date, ACE is not completed and reported in the manner acceptable to the Board ~~[indicated in paragraph (2) of this subsection]~~. The renewed license will remain on inactive status until satisfactory evidence of meeting the ACE requirements has been received by the Board and the fee to return to active status required by §153.5 of this title (relating to Fees) has been paid.

(2) Appraiser trainees may not obtain an extension of time to complete required continuing education.

(c) Renewal of Licenses for Persons on Active Duty. A person who is on active duty in the United States armed forces may renew an expired license without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(1) did not provide appraisal services while on active duty;

(2) provides a copy of official orders or other documentation acceptable to the Board showing the person was on active duty during the last renewal period;

(3) applies for the renewal within two years after the person's active duty ends;

(4) pays the renewal application fees in effect when the previous license expired; and

(5) completes ACE requirements that would have been imposed for a timely renewal.

(d) Late Renewal. If an application is filed within six months of the expiration of a previous license, the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous license.

(e) Denial of Renewal. The Board may deny an application for license renewal if the license holder is in violation of a Board order.

*§153.19. Licensing for Persons with Criminal History and Fitness Determination.*

(a) No currently incarcerated individual is eligible to obtain or renew a license. A person's license will be revoked upon the person's incarceration following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

(b) The Board may suspend or revoke an existing valid license, disqualify an individual from receiving a license, deny to a person the opportunity to be examined for a license or deny any application for a license, if the person has been convicted of a felony, had their felony probation revoked, had their parole revoked, or had their mandatory supervision revoked. Any such action may be taken after consideration of the required factors in Chapter 53, Occupations Code and this section.

(c) A license holder must conduct himself or herself with honesty, integrity, and trustworthiness. After considering the required factors in Chapter 53, Occupations Code, the Board determines that a conviction or deferred adjudication deemed a conviction under Chapter 53, Occupations Code, of the following crimes to be directly related to the duties and responsibilities of a certified general or certified residential appraiser, a licensed appraiser or appraiser trainee:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another;
- (3) offenses against public administration, including tampering with a government record, witness tampering, perjury, bribery, and corruption;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law; and
- (5) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining whether a conviction of a criminal offense not listed in subsection (c) of this section directly relates to the duties and responsibilities of a licensed occupation regulated by the Board, the Board considers:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(e) When determining the present fitness of an applicant or license holder who has been convicted of a crime, the Board also considers:

- (1) the extent and nature of the person's past criminal activity;
- (2) the person's age at the time the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the person's conduct and work activity before and after the criminal activity;

(5) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision;

(6) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(7) other evidence of the applicant's or license holder's present fitness including letters of recommendation.

(f) To the extent possible, it is the applicant's or license holder's responsibility to obtain and provide the recommendations described in subsection (e)(7) of this section.

(g) When determining a person's fitness to perform the duties and discharge the responsibilities of a licensed occupation regulated by the Board, the Board does not consider an arrest that did not result in a conviction or placement on deferred adjudication community supervision.

(h) Fitness Determination. Before applying for a license, a person may request the Board to determine if the prospective applicant's fitness satisfies the Board's requirements for licensing by submitting a request using a process acceptable to [the request form approved by] the Board and paying the required fee. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for a license.

*§153.21. Appraiser Trainees and Supervisory Appraisers.*

(a) Supervision of appraiser trainees required.

(1) An appraiser trainee may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a supervisory appraiser.

(2) An appraiser trainee may be supervised by more than one supervisory appraiser.

(3) Number of Appraiser Trainees Supervised.

(A) Supervisory appraisers may supervise no more than three appraiser trainees at one time unless the requirements in subsection (a)(3)(B) of this section, are met;

(B) Supervisory appraisers may supervise up to five appraiser trainees at one time if:

(i) the supervisory appraiser has been licensed as a certified appraiser for more than five years;

(ii) the supervisory appraiser submits an application and a trainee supervision plan using a process acceptable to the Board, subject to approval by the Board. The supervision plan must include the supervisory appraiser's plan for progress monitoring of the trainees and detail how the supervisor intends to ensure active, personal, and diligent supervision of each trainee; and

(iii) the supervisory appraiser shall prepare and maintain regular trainee progress reports and make them available to the Board upon request until the trainee becomes certified or licensed or after two years have lapsed since supervising the trainee.

(4) A supervisory appraiser may be added during the term of an appraiser trainee's license if:

(A) The supervisory appraiser and appraiser trainee have provided proof to the Board of completion of an approved

Appraiser Trainee/Supervisory Appraiser course using a process acceptable to the Board;

(B) an application to supervise has been received and approved by the Board; and

(C) the applicable fee has been paid.

(5) A licensed appraiser trainee who signs an appraisal report must include his or her license number and the word "Trainee" as part of the appraiser trainee's signature in the report.

(b) Eligibility requirements for appraiser trainee supervision.

(1) To be eligible to supervise an appraiser trainee, a certified appraiser must:

(A) be in good standing and not have had, within the last three years, disciplinary action affecting the certified appraiser's legal eligibility to engage in appraisal practice in any state including suspension, revocation, and surrender in lieu of discipline;

(B) complete an approved Appraiser Trainee/Supervisory Appraiser course; and

(C) submit proof of course completion to the Board using a process acceptable to the Board.

(2) Before supervising an appraiser trainee, the supervisory appraiser must notify the appraiser trainee in writing of any disciplinary action taken against the supervisory appraiser within the last three years that did not affect the supervisory appraiser's eligibility to engage in appraisal practice.

(3) An application to supervise must be received and approved by the Board before supervision begins.

(c) Maintaining eligibility to supervise appraiser trainees.

(1) A supervisory appraiser who wishes to continue to supervise appraiser trainees upon renewal of his/her license must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the supervisory appraiser's current license and provide proof of completion to the Board using a process acceptable to the Board.

(2) If a supervisory appraiser has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license the supervisory appraiser will no longer be eligible to supervise appraiser trainees; and the Board will take the following actions:

(A) the supervisory appraiser's license will be renewed on active status; and

(B) the license of any appraiser trainees supervised solely by that supervisory appraiser will be placed on inactive status.

(3) A certified appraiser may restore eligibility to supervise appraiser trainees by:

(A) completing the course required by this section; and

(B) submitting proof of course completion to the Board using a process acceptable to the Board.

(4) The supervisory appraiser's supervision of previously supervised appraiser trainees may be reinstated by:

(A) submitting a request using a process acceptable [the required form] to the Board; and

(B) payment of any applicable fees.

(d) Maintaining eligibility to act as an appraiser trainee.

(1) Appraiser trainees must maintain an appraisal log and appraisal experience certifications using a process acceptable to [on forms approved by] the Board, for the license period being renewed. It is the responsibility of both the appraiser trainee and the supervisory appraiser to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in supervisory appraiser. The appraiser trainee will promptly provide copies of the experience logs and certifications to the Board upon request.

(2) An appraiser trainee must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the appraiser trainee's current license and provide proof of completion to the Board.

(3) If an appraiser trainee has not provided proof of course completion at the time of renewal using a process acceptable to the Board, but has met all other requirements for renewing the license:

(A) the Board will renew the appraiser trainee's license on inactive status;

(B) the appraiser trainee will no longer be eligible to perform appraisals or appraisal services; and

(C) the appraiser trainee's relationship with any supervisory appraiser will be terminated.

(4) An appraiser trainee may return the appraiser trainee's license to active status by:

(A) completing the course required by this section;

(B) submitting proof of course completion to the Board using a process acceptable to the Board;

(C) submitting an application to return to active status, including an application to add a supervisory appraiser using a process acceptable to the Board; and

(D) paying any required fees.

(e) Duties of the supervisory appraiser.

(1) Supervisory appraisers are responsible to the public and to the Board for the conduct of the appraiser trainee under the Act.

(2) The supervisory appraiser assumes all the duties, responsibilities, and obligations of a supervisory appraiser as specified in these rules and must diligently supervise the appraiser trainee. Diligent supervision includes, but is not limited to, the following:

(A) direct supervision and training as necessary;

(B) ongoing training and supervision as necessary after the supervisory appraiser determines that the appraiser trainee no longer requires direct supervision;

(C) communication with and accessibility to the appraiser trainee; and

(D) review and quality control of the appraiser trainee's work.

(3) Supervisory appraisers must approve and sign the appraiser trainee's appraisal log at least quarterly and provide appraiser trainees with access to any appraisals and work files completed under the supervisory appraiser.

(4) After notice and hearing, the Board may reprimand a supervisory appraiser or may suspend or revoke a supervisory appraiser's license based on conduct by the appraiser trainee constituting a violation of the Act or Board rules.

(f) Termination of supervision.

(1) Supervision may be terminated by the supervisory appraiser or the appraiser trainee.

(2) If supervision is terminated, the terminating party must:

(A) immediately notify the Board using a process acceptable to the Board ~~[on a form approved by the Board]~~; and

(B) notify the non-terminating party in writing no later than the 10th day after the date of termination; and

(C) pay any applicable fees no later than the 10th day after the date of termination.

(3) If an appraiser trainee is no longer under the supervision of a supervisory appraiser:

(A) the appraiser trainee may no longer perform the duties of an appraiser trainee; and

(B) is not eligible to perform those duties until:

(i) an application to supervise the trainee has been filed using a process acceptable to the Board;

(ii) any required fees have been paid; and

(iii) the Board has approved the application.

(g) Course approval.

(1) To obtain Board approval of an Appraiser Trainee/Supervisory Appraiser course, a course provider must~~[:]~~

~~[(A)]~~ submit an application using a process acceptable to the Board. ~~[form ATS-0, Appraiser Trainee/Supervisory Appraiser Course Approval, adopted herein by reference; and]~~

~~[(B)]~~ satisfy the Board that all required content set out in form ATS-0 is adequately covered.]

(2) Approval of an Appraiser Trainee/Supervisory Appraiser course shall expire two years from the date of Board approval.

(3) An Appraiser Trainee/Supervisory Appraiser course may be delivered through:

(A) classroom delivery; or

(B) synchronous, asynchronous or hybrid distance education delivery. The course design and delivery mechanism for asynchronous distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(h) ACE credit.

(1) Supervisory appraisers who complete the Appraiser Trainee/Supervisory Appraiser course may receive ACE credit for the course.

(2) Appraiser Trainees may not receive qualifying or ACE credit for completing the Appraiser Trainee/Supervisory Appraiser course.

#### *§153.22. Volunteer Appraiser Experience Reviews.*

(a) Before applying for a license, a person may submit up to two requests for the Board to review the appraiser trainee's work product.

(b) A person may submit an application using a process acceptable to the Board for review of his or her work product after:

(1) accumulating between thirty to fifty percent of the hours of appraisal experience required by the AQB for category of appraiser license the person will be applying for;

(2) accumulating between sixty to eighty percent of the hours of appraisal experience required by the AQB for category of appraiser license the person will be applying for; or

(3) both.

(c) Work product submitted for review must fall within one of the approved categories of experience credit described in §153.15 of this title and meet the definition of real estate appraisal experience in §153.1 of this title.

(d) The application for review of work product is not complete until the completed report and workfile, all required documentation and the required fee are received by the Board.

(e) If a person provides inadequate documentation, the Board will notify the person in writing, and identify any deficiencies. Unless the work product review applicant cures the deficiencies within twenty days of notification, the Board will terminate the application for work product review.

(f) The Board will provide a written report identifying deficiencies in the work product after the review is complete.

(g) A review conducted under this provision:

(1) is for educational purposes only;

(2) does not constitute Board approval of the experience;

(3) does not preclude the Board from denying a license application submitted by the work product review applicant in the future; and

(4) will not result in a complaint against the work product review applicant unless the review reveals:

(A) knowing or intentional misrepresentation, fraud or criminal conduct; or

(B) serious deficiencies that constitute grossly negligent acts or omissions.

#### *§153.24. Complaint Processing.*

(a) Receipt of a Complaint ~~[Intake Form]~~ by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint filing ~~[Intake Form]~~. Upon receipt of a signed Complaint ~~[Intake Form]~~, staff shall:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the Complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Failure to properly supervise an appraiser trainee;

or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

- (A) with knowledge;
- (B) deliberately;
- (C) willfully; or
- (D) with gross negligence.

(c) The Board or the Executive Director may delegate to staff the duty to dismiss complaints. The complaint shall be dismissed with no further processing if the staff determines at any time that:

- (1) the complaint is not within the Board's jurisdiction;
- (2) no violation exists; or

(3) an allegation or formal complaint is inappropriate or without merit.

(d) A determination that an allegation or complaint is inappropriate or without merit includes a determination that the allegation or complaint:

- (1) was made in bad faith;
- (2) filed for the purpose of harassment;
- (3) to gain a competitive or economic advantage; or
- (4) lacks sufficient basis in fact or evidence.

(e) Staff shall conduct a preliminary inquiry to determine if dismissal is required under subsection (d) of this section.

(f) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) shall be referred to the appropriate prosecutorial authorities.

(g) Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(h) If the TALCB Division requires additional information from a Respondent during the preliminary investigative review, a copy of the Complaint filing [Intake Form] and all supporting documentation shall be included in the request, unless the complaint qualifies for covert investigation and the TALCB Division deems covert investigation appropriate.

(i) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(j) The Respondent shall submit a response within 20 days of receiving a copy of the Complaint filing [Intake Form]. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT

AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.(SIGNATURE OF RESPONDENT);

(3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(k) Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under §153.241 of this title (relating to Sanctions Guidelines), the complaint shall be dismissed with no further processing.

(l) A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (k) of this section; or

(2) staff opens a formal complaint on its own motion.

(m) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(n) The staff investigator assigned to investigate a formal complaint shall prepare a report detailing its findings [on a form approved by the Board].

(o) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(p) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

(1) the Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) a representative of the TALCB Division; and

(4) the Executive Director or his or her designee.

#### §153.25. Temporary Out-of-State Appraiser License.

(a) A person licensed as an appraiser by another state, commonwealth, or territory may register with the Board so as to qualify to appraise real property in this state without holding a license issued under the Act if:



(1) the state, commonwealth or territory licensing program under which the person holds a license has not been disapproved by the ASC; and

(2) the appraiser's business in this state is of a temporary nature not to exceed six months.

(b) A person wishing to be registered under this section must:

(1) submit an application for registration using a process acceptable to [on a form approved by] the Board;

(2) pay the required fees; and

(3) provide all supporting documentation or information requested by the Board in connection with the application for registration.

(c) A person registered under this section must submit an irrevocable consent to service of process in this state using a process acceptable to [on a form approved by] the Board.

(d) A person registered under this section may apply for a 90 day extension to the original expiration date of the temporary registration, provided the person:

(1) is continuing the same appraisal assignment listed on the original application for temporary out-of-state appraiser registration; and

(2) requests an extension using a process acceptable to [on a form approved by] the Board, received by the Board [or postmarked] prior to the expiration of the current temporary registration.

(e) A person who registers under this section is not required to comply with the fingerprint requirements in §153.12 of this title.

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

Filed with the Office of the Secretary of State on May 20, 2025.

TRD-202501735

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 936-3088



## 22 TAC §§153.13, 153.18, 153.23, 153.40

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.13, Education Required for Licensing, §153.18, Appraiser Continuing Education (ACE), §153.23, Inactive Status, and §153.40, Approval of Continuing Education Providers and Courses.

The proposed amendments to Chapter 153 are made following TALCB's quadrennial rule review for this Chapter. The proposed amendments to §153.13; §153.18; §153.23; and §153.40 conform requirements related to education with those provided by the Appraiser Qualifications Board (AQB) and are made as a result of the agency's license management system project. Because of this project, users will be able to provide information to the agency through an online process, rather than by submitting a paper form. As a result, the rule language is clarified to reflect this change.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related certifying or licensing an appraiser or appraiser trainee and qualifying education and experience required for certifying or licensing an appraiser or appraiser trainee that are consistent with applicable federal law and guidelines recognized by the Appraiser Qualifications Board (AQB); §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB, and §1103.153, which authorizes TALCB to adopt rules relating to the requirements for approval of a provider or course for qualifying or continuing education.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.13. *Education Required for Licensing.*

(a) Applicants for a license must meet all educational requirements established by the AQB.

(b) The Board may accept a course of study to satisfy educational requirements for licensing established by the Act or by this section if the Board has approved the course and determined it to be a course related to real estate appraisal.

(c) The Board will approve courses for licensing upon a determination of the Board that:

(1) the subject matter of the course was appraisal related;

(2) the course was offered by an accredited college or university, or the course was approved by the AQB under its course approval process as a qualifying education course;

(3) the applicant obtained credit received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (i) of this section (relating to distance education); and

(4) unless the AQB allows for a different duration, the course was at least 15 classroom hours in duration, including time devoted to examinations that are considered to be part of the course.

(d) The Board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(e) Course providers may obtain prior approval of a course by using a process acceptable to ~~[filing forms prescribed by]~~ the Board and submitting a letter indicating that the course has been approved by the AQB under its course approval process. Approval of a course based on AQB approval expires on the date the AQB approval expires and is automatically revoked upon revocation of the AQB approval.

(f) If the transcript reflects the actual hours of instruction the student received from an acceptable provider, the Board will accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit. Fifteen classroom hours of credit may be awarded for one academic semester hour of credit.

(g) Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the Board, that a minimum time equal to the number of hours of credit elapses from the date of course enrollment until its completion, and that the course meets the criteria listed in paragraph (1) or (2) of this subsection.

(1) The course must have been presented by an accredited college or university that offers distance education programs in other disciplines; and

(A) the person has successfully completed a written examination administered to the positively identified person at a location and proctored by an official approved by the college or university; and

(B) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the requirements for qualifying education established by the AQB and is equivalent to a minimum of 15 classroom hours, unless the AQB allows for a different duration.

(2) The course has received approval for academic credit or has been approved under the AQB Course Approval program; and

(A) the person successfully completes a written examination proctored by an official approved by the presenting entity;

(B) the course meets the requirements for qualifying education established by the AQB; and

(C) is equivalent to a minimum of fifteen classroom hours, unless the AQB allows for a different duration.

(h) "In-house" education and training is not acceptable for meeting the educational requirements for licensure.

(i) To meet the USPAP educational requirements, a course must:

(1) utilize the "National Uniform Standards of Professional Appraisal Practice (USPAP) Course" promulgated by the Appraisal Foundation, including the Student Manual and Instructor Manual; or

(2) be an equivalent USPAP course as determined by the AQB that:

(A) is devoted to the USPAP with a minimum of 15 classroom hours of instruction;

(B) uses the current edition of the USPAP promulgated by the ASB; and

(C) provides each student with his or her own permanent copy of the current edition of the USPAP promulgated by the ASB

(j) Unless authorized by law, neither current members of the Board nor those Board staff engaged in the approval of courses or educational qualifications of applicants or license holders shall be eligible to teach or guest lecture as part of an education course approved for licensing.

(k) If the Board determines that a course no longer complies with the requirements for approval, it may suspend or revoke the approval. Proceedings to suspend or revoke approval of a course shall be conducted in accordance with the Board's disciplinary provisions for licenses.

#### *§153.18. Appraiser Continuing Education (ACE).*

(a) The purpose of ACE is to ensure that license holders participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(b) To renew a license, a license holder must successfully complete the equivalent of at least 28 classroom hours of ACE courses approved by the Board, including the 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course, and any other specific courses required by the AQB during the license holder's continuing education cycle. An ACE course may not be repeated during the license holder's continuing education cycle.

(c) Awarding ACE credit. The Board will award credit to a license holder for an ACE course approved by the Board upon receipt of a course completion roster from an approved ACE provider as required under §153.40 of this title (relating to Approval of Continuing Education Providers and Courses).

(d) Continuing education credit for qualifying courses. License holders may receive continuing education credit for qualifying courses that have been approved by the Board, the AQB or another state appraiser regulatory agency.

(e) Continuing education credit for courses taken outside of Texas. An ACE course taken by a Texas license holder outside of Texas may be accepted on an individual basis for continuing education credit in Texas upon the Board's determination that:

(1) the ACE course was approved for continuing education credit by the AQB or another state appraiser regulatory agency at the time the course was taken;

(2) the Texas license holder's successful completion of the course has been evidenced by:

- (A) a course completion certificate;
- (B) a letter from the provider; or
- (C) such other proof as is satisfactory to the Board; and

(3) the Texas license holder has filed a request ~~[an Out of State Course Credit Request form]~~ using a process acceptable to [with] the Board.

(f) Up to one half of a license holder's ACE requirements may be satisfied through participation other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching an ACE course, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the Board to be equivalent to obtaining ACE.

(g) The following types of courses or activities may not be counted toward ACE requirements:

- (1) Teaching the same ACE course more than once per license renewal cycle;
- (2) "In house" education or training; or
- (3) Appraisal experience.

(h) ACE credit for attending a Board meeting.

(1) The Board may award a minimum of two hours and up to a maximum of 4 hours of ACE credit to a current license holder for attending the Board meeting held in February of an even numbered year.

(2) The hours of ACE credit to be awarded will depend on the actual length of the Board meeting.

(3) ACE credit will only be awarded in whole hour increments. For example, if the Board meeting is 2 and one half hours long, only 2 hours of ACE credit will be awarded.

(4) To be eligible for ACE credit for attending a Board meeting, a license holder must:

- (A) Attend the meeting in person;
- (B) Attend the entire meeting, excluding breaks;
- (C) Provide photo identification; and
- (D) Sign in and out on the class attendance roster for the meeting.

(5) No ACE credit will be awarded to a license holder for partial attendance.

(i) ACE credit for attending presentations by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE credit for attending a presentation by a current Board member or Board staff, the course provider must submit a request using a process acceptable to the Board ~~[the applicable form]~~ and satisfy the requirements for ACE course approval in this section.

#### *§153.23. Inactive Status.*

(a) A license holder may request to be placed on inactive status by filing a request for inactive status using a process acceptable to [on a form approved by] the Board.

(b) A license holder whose license has expired may renew on inactive status within six months after the license expiration date by:

(1) filing an application for renewal using a process acceptable to [on a form approved by] the Board;

(2) indicating on the application that the license holder wishes to renew on inactive status;

(3) paying the required late renewal fees; and

(4) satisfying the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license holder on inactive status:

(1) shall not appraise real property, engage in appraisal practice, or perform any activity for which a license is required; and

(2) must file the proper renewal application and pay all required fees, except for the national registry fee, in order to renew the license.

(d) To return to active status, a license holder who has been placed on inactive status must:

(1) request to return to active status using a process acceptable to [on a form approved by] the Board;

(2) pay the required fee;

(3) satisfy all ACE requirements that were not completed while on inactive status, except that the license holder is not required to complete the most current 7-Hour National USPAP Update ~~[update]~~ course or 7-Hour National USPAP Continuing Education course more than once in order to return to active status and shall substitute other approved courses to meet the required number of ACE hours; and

(4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title.

(e) A license holder who has been on inactive status may not resume practice until the Board issues an active license.

#### *§153.40. Approval of Continuing Education Providers and Courses.*

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

(1) Applicant--A person seeking accreditation or approval to be an appraiser continuing education (ACE) provider.

(2) ACE course--Any education course for which continuing education credit may be granted by the Board to a license holder.

(3) ACE provider--Any person approved by the Board; or specifically exempt by the Act, Chapter 1103, Texas Occupation Code, or Board rule; that offers a course for which continuing education credit may be granted by the Board to a license holder.

(4) Distance education course--A course offered in accordance with AQB criteria in which the instructor and students are geographically separated as defined by the AQB. Distance education includes synchronous delivery, when the instructor and student interact simultaneously online; asynchronous delivery, when the instructor and student interaction is non-simultaneous; and hybrid or blended course delivery that allows for both in-person and online interaction, either synchronous or asynchronous.

(5) Severe weather--weather conditions, including but not limited to severe thunderstorms, tornados, hurricanes, snow and ice, that pose risks to life or property and require intervention by government authorities and office or school closures.

(b) Approval of ACE Providers.

(1) A person seeking to offer ACE courses must:

(A) file an application using a process acceptable to ~~on the appropriate form approved by~~ the Board, with all required documentation;

(B) pay the required fees under §153.5 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(3) Exempt Providers. A unit of federal, state or local government may submit ACE course approvals without becoming an approved ACE provider.

(4) Standards for approval. To be approved by the Board to offer ACE courses, an applicant must satisfy the Board as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If an applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(5) Approval notice. An applicant shall not act as or represent itself to be an approved ACE provider until the applicant has received written notice of the approval from the Board.

(6) Period of initial approval. The initial approval of a CE provider is valid for two years.

(7) Disapproval.

(A) If the Board determines that an applicant does not meet the standards for approval, the Board will provide written notice of disapproval to the applicant.

(B) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Government Code, and Chapter 157 of this title. Venue for any hearing conducted under this section shall be in Travis County.

(8) Renewal.

(A) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(B) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(C) The Board may deny an application for renewal if the provider is in violation of a Board order.

(c) Application for approval of ACE courses. This subsection applies to appraiser education providers seeking to offer ACE courses.

(1) For each ACE course an applicant intends to offer, the applicant must:

(A) file an application using a process acceptable to ~~on the appropriate form approved by~~ the Board, with all required documentation; and

(B) pay the fees required by §153.5 of this title.

(2) An ACE provider may file a single application for an ACE course offered through multiple delivery methods.

(3) An ACE provider who seeks approval of a new delivery method for a currently approved ACE course must submit a new application and pay all required fees.

(4) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(5) Standards for ACE course approval.

(A) To be approved as an ACE course by the Board, the course must:

(i) cover subject matter appropriate for appraiser continuing education as defined by the AQB;

(ii) submit a statement describing the objective of the course and the acceptable AQB topics covered;

(iii) be current and accurate; and

(iv) be at least two hours long.

(B) The course must be presented in full hourly units.

(C) The course must be delivered by one of the following delivery methods:

(i) classroom delivery; or

(ii) distance education.

(D) The course design and delivery mechanism for asynchronous distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(6) Approval notice.

(A) An ACE provider cannot offer an ACE course until the provider has received written notice of the approval from the Board.

(B) An ACE course expires two years from the date of approval. ACE providers must reapply and meet all current requirements of this section to offer the course for another two years.

(d) Approval of currently approved ACE course for a secondary provider.

(1) If an ACE provider wants to offer an ACE course currently approved for another provider, the secondary provider must:

(A) file an application using a process acceptable to ~~on the appropriate form approved by~~ the Board, with all required documentation;

(B) submit written authorization to the Board from the author or provider for whom the course was initially approved granting permission for the secondary provider to offer the course; and

(C) pay the fees required by §153.5 of this title.

(2) If approved to offer the currently approved course, the secondary provider must:

(A) offer the course as originally approved;

(B) assume the original expiration date;

(C) include any approved revisions;

(D) use all materials required for the course; and  
(E) meet the requirements of subsection (j) of this section.

(e) Approval of ACE courses currently approved by the AQB or another state appraiser regulatory agency.

(1) To obtain Board approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application using a process acceptable to [on the appropriate form approved by] the Board, with all required documentation; and

(C) pay the course approval fee required by §153.5 of this title.

(2) If approved to offer the ACE course, the ACE provider must offer the course as approved by the AQB or other state appraiser regulatory agency, using all materials required for the course.

(3) Any course approval issued under this subsection expires the earlier of two years from the date of Board approval or the remaining term of approval granted by the AQB or other state appraiser regulatory agency.

(f) Approval of ACE courses for a 2-hour in-person one-time offering.

(1) To obtain Board approval of a 2-hour ACE course for an in-person one-time offering, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application using a process acceptable to [on the appropriate form approved by] the Board, with all required documentation; and

(C) pay the one-time offering course approval fee required by §153.5 of this title.

(2) Any course approved under this subsection is limited to the scheduled presentation date stated on the written notice of course approval issued by the Board.

(3) If a course approved under this subsection must be rescheduled due to circumstances beyond the provider's control, including severe weather or instructor illness, the Board may approve the revised course date if the provider:

(A) submits a request for revised course date using a process [on a form] acceptable to the Board; and

(B) offers the course on the revised date in the same manner as it was originally approved.

(g) Application for approval to offer a 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course.

(1) To obtain approval to offer a 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course, the provider must:

(A) be approved by the Board as an ACE provider;

(B) file an application using a process acceptable to [on the appropriate form approved by] the Board, with all required documentation;

(C) submit written documentation to the Board demonstrating that the course and instructor are currently approved by the AQB;

(D) pay the course approval fee required by §153.5 of this title;

(E) use the current version of the USPAP; and

(F) ensure each student has access to his or her own electronic or paper copy of the current version of USPAP.

(2) Approved ACE providers of the 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course may include up to one additional classroom credit hour of supplemental Texas specific information. This may include topics such as the Act, Board rules, processes and procedures, enforcement issues or other topics deemed appropriate by the Board.

(h) Application for ACE course approval for a presentation by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE course approval for a presentation by a Board member or staff, the provider must:

(1) file an application using a process acceptable to [on the appropriate form approved by] the Board, with all required documentation; and

(2) pay the fees required by §153.5 of this title.

(i) Responsibilities and Operations of ACE providers.

(1) ACE course examinations or course mechanism to demonstrate knowledge of the subject matter:

(A) are required for ACE distance education courses; and

(B) must comply with AQB requirements.

(2) Course evaluations. A provider shall provide each student enrolled in an ACE course a course evaluation form approved by the Board and a link to an online version of the evaluation form that a student may complete and submit to the provider after course completion.

(3) Course completion rosters.

(A) Classroom courses. Upon successful completion of an ACE classroom course, a provider shall submit to the Board a course completion roster in a format approved by the Board no later than the 10th day after the date a course is completed. The roster shall include:

(i) the provider's name and license number;

(ii) the instructor's name;

(iii) the course title;

(iv) the course approval number;

(v) the number of credit hours;

(vi) the date of issuance; and

(vii) the date the student started and completed the course.

(B) Distance education courses. A provider shall maintain a Distance Education Reporting Form and submit information contained in that form using a process [by electronic means] acceptable to the Board for each student completing the course not earlier than the number of hours for course credit after a student starts the course and not later than the 10th day after the student completes the course.

(4) An ACE provider may withhold any official course completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(5) Security and Maintenance of Records.

(A) An ACE provider shall maintain:

(i) adequate security against forgery for official completion documentation required by this subsection;

(ii) records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements; and

(iii) any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(B) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(C) Upon request, an ACE provider shall produce instructor and course evaluation forms for inspection by Board staff.

(6) Changes in Ownership or Operation of an approved ACE provider.

(A) An approved ACE provider shall obtain approval of the Board at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(i) ownership;

(ii) management; and

(iii) the location of main office and any other locations where courses are offered.

(B) An approved provider requesting approval of a change in ownership shall submit a request using a process acceptable to the Board [provide a Principal Application Form] for each proposed new owner who would hold at least a 10% interest in the provider [to the Board].

(j) Non-compliance.

(1) If the Board determines that an ACE course or provider no longer complies with the requirements for approval, the Board may suspend or revoke approval for the ACE course or provider.

(2) Proceedings to suspend or revoke approval of an ACE course or provider shall be conducted in accordance with §153.41 of this title.

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

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TRD-202501734

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3088



## CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

**22 TAC §§159.104, 159.105, 159.108, 159.109, 159.161, 159.205**

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §§159.104, Primary Contact; Appraiser Contact; Controlling Person; Contact Information; 159.105, Denial of Registration or Renewal of Registration; 159.108, Renewal; 159.109, Inactive Status; 159.161, Appraiser Panel; and 159.205, Identity Theft.

The proposed amendments to Chapter 159 are made as a result of the agency's license management system project. Because of this project, users will be able to provide information to the agency through an online process, rather than by submitting a paper form. As a result, the rule language are clarified to reflect this change.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be greater clarity and consistency in the rules.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). Comments may also be submitted

electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

*§159.104. Primary Contact; Appraiser Contact; Controlling Person; Contact Information.*

(a) Contact Information. For purposes of conducting business with the Board and receiving correspondence, service of documents, or notices from the Board, each applicant or license holder must provide the Board with the following contact information for its primary contact and appraiser contact:

- (1) mailing address;
- (2) phone number; and
- (3) email address.

(b) Designation of additional controlling persons.

(1) An applicant or license holder may designate additional controlling persons:

(A) on the applicant's initial license application or renewal form; or

(B) by filing a request using a process acceptable to [the appropriate form with] the Board.

(2) An applicant or license holder must notify the Board within 10 days if a person designated as an additional controlling person ceases to serve in that role using a process acceptable to the Board.

(c) An applicant or license holder must give the Board written notice of any change to the contact information for its primary contact, appraiser contact, or additional controlling persons, if any, within 10 days of the change, using a process acceptable to the Board.

(d) If a license holder's primary contact or appraiser contact changes, the license holder must give the Board written notice of the change using a process acceptable to the Board, including all information required by this section and §1104.103(b)(4) and (6) of the AMC Act, and, if appropriate, documentation that the person is qualified to serve under §1104.104(b) of the AMC Act, within 10 days of the change.

(e) A license holder must give the Board written notice using a process acceptable to the Board within 10 days if its primary contact or appraiser contact ceases to serve in that role and a qualified replacement is not immediately named. If a license holder's primary contact or appraiser contact ceases to serve in that role and the license holder does not give the Board written notice of a replacement, the license holder will be placed on inactive status.

(f) A primary contact who assumes that role during the term of the registration must provide the Board written consent to a criminal history background check, as required by §1104.102 of the AMC Act. If the person does not satisfy the Board's moral character requirements, the Board will remove the person from its records and the license holder will be placed on inactive status. Such a decision by the Board may be reviewed and reconsidered by the Executive Director if the license holder submits a written request for reconsideration within 10 days of notice that the person does not qualify to serve as primary

contact. The license holder will remain on inactive status while the request for reconsideration is pending.

(g) The appraiser contact must hold an active, current license issued by an appraiser regulatory agency within the jurisdiction of the Appraisal Subcommittee.

(h) The Board will send all correspondence and serve all required notices and documents by sending such items to the mailing or email address of the applicant's or license holder's primary contact as shown in the Board's records.

(i) If an applicant or license holder fails to update the contact information for its primary contact, appraiser contact, or additional controlling persons, if any, the contact information for these individuals is the last known contact information provided to the Board and shown in the Board's records.

*§159.105. Denial of Registration or Renewal of Registration.*

(a) AMCs, persons who own more than 10% interest in an AMC, and individuals who act as the primary contact for an AMC must be honest, trustworthy, and reliable. Accordingly, such persons must satisfy the Board of their honesty, integrity, and trustworthiness before a registration may be issued and upon renewal.

(b) The board deems the following felonies and misdemeanors directly related to the field of appraisal management and suggestive of a lack of the requisite moral character:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (3) offenses against public administration;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (5) offenses involving moral turpitude; and
- (6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(c) In determining whether a criminal offense by an applicant, the primary contact, or an owner of any interest in the AMC prevents the issuance or renewal of a registration, the Board will consider the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a registration to provide appraisal management services;
- (3) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that which the person had previously been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to be involved, directly or indirectly, in performing the duties and discharge the responsibilities of AMC.

(d) In determining the present fitness of a person who has committed an offense under this section, the Board will consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(e) A person is presumed to lack the requisite moral character if less than two years has elapsed since the offense was committed.

(f) An applicant is presumed to be unfit to perform appraisal management services if the person has violated the appraiser independence standards of Section 129E of the Truth in Lending Act (15 U.S.C. §1601 et seq.). This presumption may be rebutted by credible evidence to the contrary.

(g) It is the responsibility of the applicant to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has maintained a record of good conduct, and is current on the payment of any outstanding court costs, supervision fees, fines, and restitution.

(h) A currently incarcerated individual does not possess the required good moral character.

(i) The primary contact and each owner of more than 10% of the AMC must consent in writing to a criminal history background check at the time the AMC submits an application for registration or renewal using a process acceptable to the Board.

(j) An applicant must provide information related to whether a person who owns an interest in the applicant has:

(1) had a license or certification to act as an appraiser denied, revoked, or surrendered in lieu of revocation; and

(2) the license or certification to act as an appraiser has not been subsequently granted or reinstated; and

(3) the license or certification to act as an appraiser was denied, revoked, or surrendered in lieu of revocation for a nonsubstantive reason for the Board's determination under §159.102 of this chapter.

(k) An application for registration or renewal of registration that is denied by TALCB Division staff may be reviewed and reconsidered by the Executive Director if the applicant submits a written request for reconsideration within 10 days of notice of the denial. The right to request reconsideration is distinct from, and in addition to, an applicant's right to appeal an application denial before SOAH.

#### *§159.108. Renewal.*

##### *(a) Renewal Notice.*

(1) The Board will send a renewal notice to the license holder's primary contact at least 90 days prior to the expiration of the license.

(2) Failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(b) Application for Renewal. To renew a license, a license holder must:

(1) submit an application as required by §1104.103 of the AMC Act using a process acceptable to the Board; and

(2) pay all applicable renewal fees established in §159.52 of this chapter.

(3) It is the responsibility of the license holder to apply for renewal in accordance with this section sufficiently in advance of the expiration date to ensure that all renewal requirements, including background checks, are satisfied before the expiration date of the license.

(4) An application for renewal is not complete, and no renewal will issue, until all application requirements are satisfied.

(c) Denial of Renewal. The Board may deny an application for license renewal if the license holder is in violation of a Board order.

#### *§159.109. Inactive Status.*

(a) To elect to be placed on inactive status, a license holder must do the following:

(1) file a request for inactive status using a process acceptable to [on a form approved by] the Board; and

(2) confirm in writing to the Board that the license holder has given written notice of its election to go inactive to all appraisers listed on the license holder's appraiser panel at least 30 days prior to filing the request for inactive status.

(b) In order to return from inactive status to active status, a license holder must submit a request [to the Board a completed Request for Active Status form] and proof of compliance with all outstanding requirements for active registration using a process acceptable to the Board.

(c) A license holder that has elected or been placed on inactive status may not engage in any activity for which registration is required until an active registration has been issued by the Board.

(d) The appraiser panel of a license holder on inactive status will remain in place.

(e) A license holder may renew on inactive status. To renew on inactive status, a license holder must satisfy:

(1) all requirements under subsection (a) of this section; and

(2) all renewal requirements for an active registration under §159.108 of this chapter.

#### *§159.161. Appraiser Panel.*

(a) If an appraiser is not employed by the AMC or already a member of the AMC's panel, an AMC must add the appraiser to the AMC's panel no later than the date on which the AMC makes an assignment to the appraiser.

(b) To add an appraiser to a panel, the AMC must[:]

[(+)] initiate the request using a process acceptable to the Board [appropriate two-party transaction through the Board's online panel management system], including payment of any required fee(s).[: or]

[(2)] submit a notice on a form approved by the Board for this purpose, including the signatures of the appraiser and the AMC's primary contact, and the appropriate fee(s).]

(c) An appraiser or an AMC may terminate the appraiser's membership on a panel by[:]

[(+)] submitting a termination notice using a process acceptable to the Board electronically through the Board's online panel management system, including payment of any required fee.[: or]



{(2) submitting a notice on a form approved by the Board for this purpose and the appropriate fee(s).}

(d) If an appraiser terminates his or her membership on a panel, the appraiser must immediately notify the AMC of the termination. If an AMC terminates an appraiser's membership on a panel, the AMC must immediately notify the appraiser of the termination.

(e) If an appraiser's license is suspended or revoked, the Board will remove the appraiser from any panels on which the appraiser is listed with no fee charged to the AMC or the appraiser.

(f) If an appraiser's license expires, the Board will:

(1) change the appraiser's license status the month following expiration of the license; and

(2) remove the appraiser from any panels on which the appraiser is listed with no fee charged to the AMC or the appraiser once the license can no longer be renewed.

*§159.205. Identity Theft.*

(a) For purposes of this subchapter, "identity theft" means any of the following activities occurring in connection with the rendition of appraisal management services:

(1) Unlawfully obtaining, possessing, transferring or using a license or license number issued by the Board; or

(2) Unlawfully obtaining, possessing, transferring or using a person's electronic or handwritten signature.

(b) A license holder shall implement and maintain reasonable procedures to protect and safeguard the license holder against identity theft.

(c) A license holder must notify the Board if the license holder is the victim of identity theft within 90 days of discovering such theft. Effective notice may be provided by filing a complaint using a process acceptable to the Board ~~[signed, written complaint on a form prescribed by the Board]~~.

(d) The Board may invalidate a current license and issue a new one to a license holder the Board determines is a victim of identity theft. Any license holder seeking the invalidation of a current license and issuance of a new one must submit a ~~[written, signed]~~ request using a process acceptable to [on a form provided by] the Board for the invalidation of a current license and issuance of a new one. The basis for the request must be identity theft, and the requestor must submit credible evidence that the license holder is a victim of identity theft. Without limiting the type of evidence a license holder may submit to the Board to support a claim of identity theft, a court order issued in accordance with Texas Business and Commerce Code Chapter 521, Subchapter C, declaring the license holder is a victim of identity theft constitutes credible evidence. Any such court order must relate to identity theft as defined in this section.

(e) Engaging in identity theft to perform unauthorized appraisal management services is a violation of this subchapter, which may result in disciplinary action under §159.201. In addition to any disciplinary action taken by the Board, persons engaging in identity theft may also be referred to the appropriate law enforcement agency for criminal prosecution.

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

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Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3088

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**

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

**CHAPTER 3. ADVISORY COMMITTEES,  
COUNCILS, AND BOARDS**

**25 TAC §3.1**

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §3.1, concerning Texas School Health Advisory Committee.

**BACKGROUND AND PURPOSE**

The purpose of the proposal is to improve public access to DSHS advisory committee, council, and board rules by moving all advisory committee, council, and board rules into a single chapter. The Texas School Health Advisory Committee (TSHAC) rule is being repealed from 25 TAC Chapter 37 and proposed as new in 25 TAC Chapter 3. The repeal is proposed elsewhere in this issue of the *Texas Register*. The rule is updated to align with the Health and Human Services (HHS) advisory committee rule template and is substantially similar to the rule proposed for repeal.

Additionally, the proposal aligns the rule with statute and Executive Order No. GA-55, issued January 31, 2025.

**SECTION-BY-SECTION SUMMARY**

A new chapter 3 is proposed titled Advisory Committees, Councils, and Boards.

Proposed new §3.1(a), (b), and (c) provide the applicable statutes governing the TSHAC, its purpose, and tasks the TSHAC performs.

Proposed new §3.1(d) provides the requirements for submitting annual written reports and posting TSHAC meeting dates and meeting dates for any subcommittees.

Proposed new §3.1(e) provides the meeting, frequency, and quorum requirements.

Proposed new §3.1(f) describes the required number and composition of the members.

Proposed new §3.1(g) describes how the officers are elected, terms of office, and responsibilities of the officers.

Proposed new §3.1(h) describes the required training for members.

Proposed new §3.1(i) describes the travel reimbursement policy.

Proposed new §3.1(j) provides when TSHAC is abolished.

**FISCAL NOTE**

Christy Havel-Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will

be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Christy Havel-Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved access to uniformly formatted DSHS advisory committee, council, and board rules located in a single chapter. The proposal also ensures that the rule aligns with statute and Executive Order No. GA-55, issued January 31, 2025.

Christy Havel-Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to DSHS.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R028" in the subject line.

#### STATUTORY AUTHORITY

The new rule is authorized by Texas Health and Safety Code §1001.0711, which provides that the executive commissioner will establish the School Health Advisory Committee at the department by rule; 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; and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new rule affects Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001.

##### §3.1. Texas School Health Advisory Committee.

(a) Statutory authority. The Texas School Health Advisory Committee (committee) must be appointed under and governed by this section. The committee is subject to Texas Health and Safety Code §1001.0711, Texas Government Code §523.0201, and Texas Education Code §38.104(c). Texas Government Code §2110.008 does not apply to a committee created under this section.

(b) Purpose. The committee advises the executive commissioner and provides assistance in establishing a leadership role for the Department of State Health Services (DSHS) in support for and delivery of coordinated school health programs and school health services.

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

(1) provides assistance in establishing a leadership role for DSHS in support for the delivery of coordinated school health programs and school health services;

(2) reviews the analysis of the required student physical fitness assessment adopted by the Texas Education Agency (TEA);

(3) develops recommendations as outlined in Texas Education Code §38.104(c); and

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

(d) Reporting requirements. The committee must file an annual written report of the committee's activities to the commissioner. The committee must post the meeting dates of the committee and any subcommittees, meeting agendas, and meeting minutes on DSHS website at [dshs.texas.gov](http://dshs.texas.gov).

(e) Meetings.

(1) Open meetings. Meetings must be announced and conducted in accordance with the Open Meetings Act, Texas Government Code Chapter 551. A meeting may be called by DSHS, the presiding officer, or at least three members of the committee. DSHS must make meeting arrangements and must contact committee members to determine availability for a meeting date and place. Each member of the committee must be informed of a committee meeting at least ten busi-

ness days before the meeting. The agenda for each committee meeting must include an agenda item for public comment allowing any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(2) Frequency. The committee must meet at least twice each year.

(3) Quorum. A simple majority of the committee will constitute a quorum for the purpose of transacting official business. The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(f) Membership.

(1) The committee is composed of 20 voting members with 17 members appointed by the executive commissioner. The executive commissioner delegates the commissioner of state health services to appoint committee members. In selecting members to serve on the committee, DSHS considers the applicants' qualifications, background, interest in serving, and geographic location.

(A) Three members representing the following categories.

(i) At least one representative from the Texas Department of Agriculture, appointed by the Commissioner of Agriculture;

(ii) at least one representative from the TEA, appointed by the Commissioner of Education; and

(iii) the DSHS School Health Program Coordinator or other DSHS representative.

(B) Seventeen members representing the following categories.

(i) Two individuals representing school superintendents, school district board members, or other school administrators;

(ii) one registered nurse working in a school as a school nurse or school nurse administrator;

(iii) five consumer members who are parents of school-age children with at least one parent of a child with special needs;

(iv) one physician, or physician's assistant, or nurse practitioner currently providing health services to school-aged children;

(v) one representative working in a school as a school counselor with certification as a school counselor;

(vi) four members representing a nonprofit or not-for-profit entity directly working with schools or school-aged children to support student learning, development, mental health, substance abuse, and health-related activities with no more than one member representing an institution of higher education;

(vii) one representative working in a school as a physical educator or physical education administrator with certification as a physical educator;

(viii) one representative working in a school as a health educator or health education administrator with certification as a health educator; and

(ix) one representative working in the school setting as part of the district's school nutrition program.

(2) In an effort to build a committee reflective of the current Texas population, special consideration will be given to:

(A) urban, rural, and suburban diversity; and

(B) a broad statewide geographic representation whenever possible.

(3) Membership appointments must include one alternate member for each appointed position. The alternate will automatically be appointed as a member if the primary appointee is unable or unwilling to fulfill the position; or, whenever there is a vacancy. The alternate will perform the same duties and have the same privileges once appointed as a member to fulfill the unexpired term.

(4) The term of office of each member is four years. Members must serve after expiration of their term until a replacement is appointed.

(A) Members are appointed for staggered four-year terms so the terms of an equal or almost equal number of members expire on July 31 of each year.

(B) A member whose term is expiring has the option to apply for appointment for one additional term.

(C) This subsection does not apply to agency representative members, who do not have term durations or limits and serve while remaining in the agency position.

(g) Officers. The committee elects a presiding officer and an assistant presiding officer from among its members to begin serving a two-year term on August 1 of their term.

(1) Each officer must serve until July 31 of their two-year term.

(2) The presiding officer must attend in-person at all committee meetings, call meetings in accordance with this section, and appoint subcommittees of the committee, as necessary. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer must act for the presiding officer during the presiding officer's absence and must assume the duties of the presiding officer in the event of a vacancy.

(4) If the assistant presiding officer position becomes vacant, it may be filled by a vote of the committee.

(5) A member may serve no more than two terms as an officer.

(6) The committee may reference its officers by other titles, such as chairperson and vice-chairperson.

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

(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 HHS Travel Policy.

(1) No compensatory per diem will be paid to members unless required by law.

(2) A committee member who is an employee of a state agency, other than DSHS, may not receive reimbursement for expenses from DSHS.

(3) Each member who is eligible to be reimbursed for expenses must submit to DSHS staff the member's receipts for allowable expenses as determined by school health program guidelines, and any required official forms, no later than 14 days after each committee meeting.

(4) Requests for reimbursement of expenses must be made on official state vouchers prepared by DSHS.

(j) Date of abolition. The committee is required by statute and will continue as long as the state law that requires it remains in effect.

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

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 221-9021



## CHAPTER 31. NUTRITION SERVICES

### SUBCHAPTER B. FARMERS' MARKET NUTRITION PROGRAM

#### 25 TAC §31.11, §31.12

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §31.11, concerning Definitions; and §31.12, concerning Program Administration.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal the rules in Texas Administrative Code, Title 25, Chapter 31, Nutrition Services, Subchapter B, Farmers' Market Nutrition Program. The Farmers' Market Nutrition Program is no longer administered by HHSC as the program was transferred to the Texas Department of Agriculture.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

#### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§31.11. *Definitions.*

§31.12. *Program Administration.*

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 May 21, 2025.

TRD-202501781

Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 221-9021



## CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

### SUBCHAPTER R. ADVISORY COMMITTEES

#### 25 TAC §37.350

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §37.350, concerning Texas School Health Advisory Committee.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to improve public access to DSHS advisory committee, council, and board rules by moving all advisory committee, council, and board rules into a single chapter. The Texas School Health Advisory Committee rule is being repealed from 25 TAC Chapter 37 and proposed as new in 25 TAC Chapter 3. The new rule is updated to align with the HHS advisory committee rule template. The proposal also aligns the rule with statute and Executive Order No. GA-55, issued January 31, 2025. The new rule proposed elsewhere in this issue of the *Texas Register* is substantially similar to the rule proposed for repeal.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §37.350 removes it from 25 TAC Chapter 37 and the new rule is proposed in 25 TAC Chapter 3.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(4) the proposed repeal will not affect fees paid to DSHS;

(5) the proposed repeal will not create a new regulation;

(6) the proposed repeal will repeal existing regulation;

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

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

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

Christy Havel-Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeal does not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public benefit will be improved access to uniformly formatted DSHS advisory committee, council, and board rules located in a single chapter.

Christy Havel-Burton has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the repeal applies only to DSHS.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R028" in the subject line.

#### STATUTORY AUTHORITY

The repeal is authorized by 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 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeal affects Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001.

§37.350. *Texas School Health Advisory Committee.*

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 May 21, 2025.

TRD-202501743

Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 221-9021



## CHAPTER 117. END STAGE RENAL DISEASE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 117 in Texas Administrative Code (TAC) Title 25, which consists of §§117.1, 117.2, 117.11 - 117.19, 117.31 - 117.33, 117.41 - 117.49, 117.61 - 117.65, and 117.81 - 117.86

### BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal 25 TAC Chapter 117, End Stage Renal Disease Facilities, Subchapters A - F. The proposed repeal allows similar and updated new rules to be proposed in 26 TAC Chapter 507, End Stage Renal Disease Facilities. The new rules are proposed elsewhere in this issue of the *Texas Register*. 25 TAC Chapter 117, Subchapters G and H were administratively transferred to 26 TAC 507, Subchapters Y and Z.

### FISCAL NOTE

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

### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will repeal existing regulations;

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

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

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

Trey Wood has also determined that there may be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the proposal, as they will not be required to alter their current business practices.

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the repeal is in effect, the public benefit will be more accurate and up-to-date rule language, updated statutory and rule references, greater clarity and accuracy of the end stage renal disease facility rules, improved organization and readability, and greater consistency with existing statutes and HHSC rules.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals, as they will not be required to alter their current business practices.

### TAKINGS IMPACT ASSESSMENT

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

### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R077" in the subject line.

## SUBCHAPTER A. GENERAL PROVISIONS

### 25 TAC §117.1, §117.2

## STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §524.0005, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeals implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

*§117.1. Purpose.*

*§117.2. Definitions.*

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

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Karen Ray

Chief Counsel

Department of State Health Services

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



## SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

### 25 TAC §§117.11 - 117.19

The repeals are authorized by Texas Government Code §524.0005, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeals implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

*§117.11. General Requirements for a License.*

*§117.12. Application and Issuance of Initial License.*

*§117.13. Application and Issuance of Renewal License.*

*§117.14. Changes in Status.*

*§117.15. Inactive Status and Closure.*

*§117.16. Fees.*

*§117.17. Time Periods for Processing and Issuing a License.*

*§117.18. Inspections.*

*§117.19. Exceptions to These Rules.*

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

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Karen Ray

Chief Counsel

Department of State Health Services

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## SUBCHAPTER C. MINIMUM STANDARDS FOR EQUIPMENT, WATER TREATMENT AND REUSE, AND SANITARY AND HYGIENIC CONDITIONS

### 25 TAC §§117.31 - 117.33

The repeals are authorized by Texas Government Code §524.0005, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeals implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

*§117.31. Equipment.*

*§117.32. Water Treatment, Dialysate Concentrates, and Reuse.*

*§117.33. Sanitary Conditions and Hygienic Practices.*

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

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Karen Ray

Chief Counsel

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## SUBCHAPTER D. MINIMUM STANDARDS FOR PATIENT CARE AND TREATMENT

### 25 TAC §§117.41 - 117.49

The repeals are authorized by Texas Government Code §524.0005, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect

the health and safety of a patient of an end stage renal disease facility.

The repeals implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

- §117.41. *Governing Body.*
- §117.42. *Patient Rights.*
- §117.43. *Quality Assessment and Performance Improvement.*
- §117.44. *Indicators of Quality of Care.*
- §117.45. *Provision and Coordination of Treatment and Services.*
- §117.46. *Qualifications of Staff.*
- §117.47. *Clinical Records.*
- §117.48. *Incident Reports.*
- §117.49. *Miscellaneous Policies and Protocols.*

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

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Karen Ray

Chief Counsel

Department of State Health Services

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## SUBCHAPTER E. DIALYSIS TECHNICIANS

### 25 TAC §§17.61 - 117.65

The repeals are authorized by Texas Government Code §524.0005, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeals implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

- §117.61. *General Requirements.*
- §117.62. *Training Curricula and Instructors.*
- §117.63. *Competency Evaluation.*
- §117.64. *Documentation of Competency.*
- §117.65. *Prohibited Acts.*

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

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Karen Ray

Chief Counsel

Department of State Health Services

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



## SUBCHAPTER F. CORRECTIVE ACTION PLAN AND ENFORCEMENT

### 25 TAC §§117.81 - 117.86

The repeals are authorized by Texas Government Code §524.0005, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeals implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

- §117.81. *Corrective Action Plan.*
- §117.82. *Voluntary Appointment of a Temporary Manager.*
- §117.83. *Involuntary Appointment of a Temporary Manager.*
- §117.84. *Disciplinary Action.*
- §117.85. *Administrative Penalties.*
- §117.86. *Recovery of Costs.*

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

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Karen Ray

Chief Counsel

Department of State Health Services

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## CHAPTER 229. FOOD AND DRUG

### SUBCHAPTER T. LICENSURE OF TANNING FACILITIES

#### 25 TAC §§229.341 - 229.357

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of 25 Texas Administrative Code (TAC) Chapter 229, Subchapter T, concerning Licensure of Tanning Facilities, which consists of §§229.341 - 229.357.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Health and Safety Code Chapter 145 as amended by Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session, 2015. S.B. 202 is related to the transfer of certain occupational regulatory programs and the deregulation of certain activities and occupations. S.B. 202 amended certain provisions in Health and Safety Code Chapter 145, relating to the licensing and regulation of tanning facilities, including the removal of the requirement to license. The requirement for DSHS to license tanning facilities no longer exists; Subchapter T is being repealed.

#### SECTION-BY-SECTION SUMMARY



The proposed repeal of §§229.341 - 229.357 deletes the rules as no longer necessary because the requirement for DSHS to license tanning facilities no longer exists.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because these small businesses are no longer required to be licensed.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the repeals because the repeals reduce the burden or responsibilities imposed on regulated persons, are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules, and the repeals do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Timothy Stevenson, Deputy Commissioner, Consumer Protection Division, has determined that for each year of the first five years the repeals are in effect, the public benefit will be improved by conforming to statute and removal of unnecessary rules from the TAC.

Christy Havel Burton has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because these facilities are no longer required to be licensed by DSHS.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R019" in the subject line.

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which provide that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Health and Safety Code §431.241.

The repeals affect Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001.

§229.341. *Purpose.*

§229.342. *Applicable Laws and Regulations.*

§229.343. *Definitions.*

§229.344. *Exemptions.*

§229.345. *Licensing of Tanning Facilities.*

§229.346. *Licensing Fees.*

§229.347. *Revocation, Cancellation, Suspension, and Probation of a License.*

§229.348. *Report of Changes.*

§229.349. *Advertising.*

§229.350. *Warning Signs.*

§229.351. *Tanning Devices.*

§229.352. *Protective Eyewear.*

§229.353. *Operators.*

§229.354. *Records.*

§229.355. *Injury Reports.*

§229.356. *Sanitation.*

§229.357. *Enforcement and Penalties.*

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

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TRD-202501741

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 834-6755

## CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§417.1, concerning Purpose; 417.2, concerning Application; 417.3, concerning Compliance with Nondiscrimination Laws; 417.6, concerning Assignment and Use of Pooled Vehicles; 417.7, concerning Inscription on State Vehicles; 417.9, concerning Material Safety Data Sheets; 417.14, concerning Non-Commercial Groups; 417.23, concerning Unauthorized Departures That May Have Unusual Consequences; 417.27, concerning Depositing Department Funds; 417.29, concerning Benefit Funds: Use and Control; 417.33, concerning Mail for Staff Residing On Campus; 417.34, concerning Commercial Solicitation on Grounds; 417.509, concerning Peer Review; 417.514, concerning TDMHMR Administrative Responsibilities; 417.516, concerning Exhibits; 417.517, References; and 417.518, concerning Distribution.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal certain rules in Chapter 417, as the rules are no longer necessary. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Texas Department of State Health Services, including client services, certain regulatory functions, and the operation of state hospitals, transferred to the HHSC.

These rules are duplicative of agency rules located in Texas Administrative Code, Title 26, Chapters 910, 926 and 930 and agency policies.

### FISCAL NOTE

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

### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

### TAKINGS IMPACT ASSESSMENT

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

### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

## SUBCHAPTER A. STANDARD OPERATING PROCEDURES

**25 TAC §§417.1 - 417.3, 417.6, 417.7, 417.9, 417.14, 417.23, 417.27, 417.29, 417.33, 417.34**

### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§417.1. *Purpose.*

§417.2. *Application.*

§417.3. *Compliance with Nondiscrimination Laws.*

- §417.6. *Assignment and Use of Pooled Vehicles.*  
 §417.7. *Inscription on State Vehicles.*  
 §417.9. *Material Safety Data Sheets.*  
 §417.14. *Non-Commercial Groups.*  
 §417.23. *Unauthorized Departures That May Have Unusual Consequences.*  
 §417.27. *Depositing Department Funds.*  
 §417.29. *Benefit Funds: Use and Control.*  
 §417.33. *Mail for Staff Residing On Campus.*  
 §417.34. *Commercial Solicitation on Grounds.*

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 May 21, 2025.

TRD-202501782

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



## SUBCHAPTER K. ABUSE, NEGLECT, AND EXPLOITATION IN TDMHMR FACILITIES

### 25 TAC §§417.509, 417.514, 417.516 - 417.518

#### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

- §417.509. *Peer Review.*  
 §417.514. *TDMHMR Administrative Responsibilities.*  
 §417.516. *Exhibits.*  
 §417.517. *References.*  
 §417.518. *Distribution.*

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

Filed with the Office of the Secretary of State on May 21, 2025.

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Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§507.1, 507.2, 507.11 - 507.24, 507.30 - 507.38, 507.41 - 507.49, 507.51 - 507.60, 507.71 - 507.75, and 507.81 - 507.93.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comprehensively update the end stage renal disease (ESRD) facility rules to align with Texas Health and Safety Code Chapter 251; ensure patient safety; ensure accuracy with current facility licensing, inspection, and investigation procedures; and reflect current technologies. This update also updates definitions and improves rule organization and readability by correcting grammar and updating language, references, and citations; ensures consistency across HHSC Health Care Regulation (HCR) rules; reflects the transition of regulatory jurisdiction from the Texas Department of State Health Services (DSHS) to HHSC; and relocates the rules from Texas Administrative Code (TAC) Title 25 to Title 26.

The proposed rules require compliance with the most current applicable guidelines and standards (including Centers for Medicare and Medicaid Services, Centers for Disease Control, U.S. Food and Drug Administration, and other technical standards), to ensure patient safety.

To implement these changes, rules in 25 TAC Chapter 117, End Stage Renal Disease Facilities, are being repealed and new rules proposed in 26 TAC Chapter 507, End Stage Renal Disease Facilities. The repeal is proposed elsewhere in this issue of the *Texas Register*. 25 TAC Chapter 117, Subchapters G and H were administratively transferred to 26 TAC 507, Subchapters Y and Z.

#### SECTION-BY-SECTION SUMMARY

The following proposed new sections are substantially the same as the rules from 25 TAC Chapter 117, except for edits made to reflect transition of regulatory oversight from DSHS to HHSC; update regulatory group name changes, contact information, and citations; and correct outdated language, terms, and grammar: §507.1, Purpose; §507.31, Equipment; §507.35, Reuse of Hemodialyzers and Related Devices; §507.42, Patient Rights; §507.43, Quality Assessment and Performance Improvement; §507.46, Emergency Preparedness; §507.88, Voluntary Appointment of a Temporary Manager; §507.89, Involuntary Appointment of a Temporary Manager; §507.92, Administrative Penalties; and §507.93, Recovery of Costs

The following new sections containing substantial changes from 25 TAC Chapter 117 are described below.

Proposed new Subchapter A, General Provisions, contains §507.1 and §507.2.

Proposed new §507.2, Definitions, adds new terminology to reflect current practices and new technology, including audio-only telecommunication, integrated hemodialysis systems, and transitional care. This section also clarifies and updates language and removes terms that are no longer in use due to HHSC organizational changes.

Proposed new Subchapter B, Licensing Requirements, contains §§507.11 - 507.24.

Proposed new §507.11, General Requirements for a License, provides general license requirements, adds clarifying language about an ESRD facility sharing buildings with other facilities, and aligns language about license exceptions with statute.

Proposed new §507.12, Application and Issuance of Initial License, provides initial licensure requirements, and clarifies the pre-licensure conference requirements and procedures and fire safety inspection documentation requirements. The section also adds language clarifying that HHSC considers an application withdrawn if an applicant does not complete all licensure requirements within a certain timeframe.

Proposed new §507.13, License Renewal, provides license renewal requirements, including fire safety inspection documentation requirements, and adds a fee for late renewal application materials.

Proposed new §507.14, Change of Ownership, details the process for notifying HHSC of a facility's change of ownership and requires a facility to submit the change of ownership application materials to HHSC within a certain timeframe.

Proposed new §507.15, Relocation, details the process for notifying HHSC of a planned facility relocation and clarifies relocation and license application requirements.

Proposed new §507.16, Change in Status, requires a facility to notify HHSC in writing within certain timeframes of certain changes impacting the facility's construction, equipment, finish upgrades, name, contact information, administrator, operations, services, or stations. The section also details the process for seeking HHSC approval before implementing certain changes.

Proposed new §507.17, Inactive Status, provides the requirements and procedures for a licensed facility to notify HHSC and request HHSC to place the facility's license on inactive status when the facility ceases providing services. The section also clarifies how to request an extension for a facility license's inactive status and specifies that a facility may only seek to have its license placed on inactive status once during each two-year licensing period.

Proposed new §507.18, Closure, provides the procedures a facility must follow when closing, including notifying HHSC in writing before or immediately upon a facility's closure.

Proposed new §507.19, Time Periods for Processing and Issuing a License, provides the time periods and procedures for when HHSC processes and issues a license.

Proposed new §507.20, Fees, provides license fee requirements and adds a provision clarifying that if an application payment does not clear, HHSC will not process the application until the payment clears.

Proposed new §507.21, Exceptions to These Rules, details the process for requesting a temporary exception from a requirement in the chapter and clarifies that HHSC may conduct an inspection and consult with the medical review board before approving an exception. The section also provides the timeframe within which HHSC responds to an exception request and clarifies that granted exception requests are public information.

Proposed new §507.22, Exceptions During Emergency or Disaster Situations, specifies the requirements and protocols for a facility requesting a rule exception during an emergency or disaster. The section clarifies that HHSC may grant an exception in an emergency for a maximum 120 days with a single renewal period for an additional 120 days.

Proposed new §507.23, License Renewal During a Public Health Disaster, specifies that in certain public health disaster situations, a facility applying for a renewal license may request an

exemption for the fire safety survey requirement by providing evidence to HHSC that the local fire authority is not performing fire inspections.

Proposed new §507.24, Use of Off-Site Facility During a Public Health Disaster, details the requirements and protocols for a facility seeking to use an off-site facility to train and dialyze patients during certain public health disaster situations.

Proposed new Subchapter C, Operational Requirements for Equipment, Water Treatment and Reuse, and Sanitary and Hygienic Conditions, contains §§507.30 - 507.38.

Proposed new §507.30, Technical Standards, lists the technical standards for ESRD facilities.

Proposed new §507.32, General, requires a facility to meet the operational requirements in Subchapter C and physical plant and construction requirement in Subchapter H of the proposed rules. The section details the responsibilities of a facility's medical director and biomedical technical staff. The section also requires facility staff to inform the biotechnical staff and any other staff as required by facility policy before altering or adding a device to the water system.

Proposed new §507.33, Water Treatment, provides water treatment requirements. The section also requires a facility to use devices and systems in accordance with manufacturer instructions and single-patient devices to meet the Centers for Medicare and Medicaid Services (CMS) Conditions for Coverage and clarifies testing and breakdown protocols for automated chlorine monitoring systems.

Proposed new §507.34, Dialysate, provides dialysate requirements, including requiring a facility to use hemodialysis machines in accordance with manufacturer instructions for dialysate conductivity and pH testing and requiring calibration testing and testing logs for machines with internal independent conductivity and pH testing. The section also removes specific required results for bacteriological testing and instead refers to the Association for the Advancement of Medical Instrumentation standards for such testing. Additionally, the section specifies the circumstances under which a facility may add an additive to dialysate.

Proposed new §507.36, Infection Control, provides infection control requirements, including requiring handwashing with soap and water after three uses of waterless antiseptic hand rub and requiring facility staff to wear masks where applicable. The section also makes necessary updates to remove redundant information from the physical environment section, as this information is already included in Subchapter H of the proposed rules.

Proposed new §507.37, Environmental, provides general cleaning procedures, specific disinfection procedures for equipment and dialysis machines, and water and waste disposal requirements for facilities.

Proposed new §507.38, Disease Prevention, provides disease prevention requirements, including Hepatitis B prevention, tuberculosis prevention, and pneumococcal and influenza vaccine and policy requirements for facilities, staff, and patients. The section also details gown requirements for isolation areas and rooms.

Proposed new Subchapter D, Operational Requirements for Patient Care and Treatment, contains §§507.41 - 507.49 and 507.51 - 507.60.

Proposed new §507.41, Governing Body, provides the responsibilities of the governing body. This section also relocates the social worker responsibilities and maximum patient load information to new §507.51, Social Services.

Proposed new §507.44, Indicators of Quality of Care, removes outdated information requiring a facility to submit an annual report to the CMS and requires a facility to review its own data to identify opportunities to improve care for their patients. The section also details requirements for complaint resolution.

Proposed new §507.45, Patient Assessment and Plan of Care, provides patient plan of care requirements based on the patient's interdisciplinary assessment and allows the interdisciplinary team conference to take place via audio-only telecommunications. The section also provides procedures for considering an involuntary discharge of a disruptive patient.

Proposed new §507.47, Medication Storage and Administration, provides medication storage and medication administration protocols for the facility and related medical staff. The section also details the requirements for saline drawing and preparation.

Proposed new §507.48, Nursing Services, provides requirements for nursing services provided by the facility, including nurse-to-patient ratios. The section also details the requirements for facility policies for allowing patients in the building without a registered nurse present when inclement weather or safety concerns exist, and for referring a patient to a nurse for evaluation.

Proposed new §507.49, Nutrition Services, requires facilities to provide nutrition services to a patient and the patient's caregivers to maximize patient nutritional status. The section also clarifies and updates language, including the requirements for the maximum caseload of one full time equivalent dietitian.

Proposed new §507.51, Social Services, requires facilities to provide social services to a patient and their family to support and maximize the patient's adjustment, social functioning, and rehabilitation. The section also clarifies and updates language, including the requirements for the maximum caseload of one full time equivalent qualified social worker.

Proposed new §507.52, Medical Services, details the requirements for the medical director, patient care under medical staff, medical staff visitation to patients receiving dialysis, physician extenders, and student clinical experiences and limitations.

Proposed new §507.53, Home Dialysis Service, details the requirements for facilities providing home dialysis services and clarifies staff levels for home dialysis patients, minimum training requirements for registered nurses, training of the patient and caregiver, and a facility's responsibilities for monitoring water quality and dialysate systems.

Proposed new §507.54, Staff Qualifications, provides staff orientation, training, documentation, and policy requirements. The section also includes facility administrator, nursing staff, and biomedical technical staff requirements. Additionally, the section requires facilities to establish a nursing peer review committee in accordance with Texas Occupations Code Chapter 303.

Proposed new §507.55, Clinical Records, details the policy and procedure requirements for the facility's clinical record system, the timeframe within which a facility's physician must complete a comprehensive medical history and physical exam after the patient's admission to the facility, and other clinical record require-

ments. This section requires a patient's clinical record to include patient consent information, including documentation that the physician explained treatment information and a licensed registered nurse witnessed the patient signing the consent forms. The section also includes requirements for providing treatment to a transient patient.

Proposed new §507.56, Incident Reports, clarifies which incidents a facility must report to HHSC and when and how a facility must make the reports.

Proposed new §507.57, Nonconventional Dialysis, adds new requirements for facilities related to patient self-care, transitional care services, and integrated hemodialysis systems to accommodate industry changes and new technologies.

Proposed new §507.58, Staffing and Reporting Requirements During a Public Health Disaster, specifies the requirements and protocols for a currently licensed ESRD facility to request HHSC approval to temporarily adjust staffing ratios and requirements for nursing, nutrition, social services, and staffing levels of direct care staff based on documented staffing shortages during certain public health disaster situations. The section also allows for certain other changes during a public health disaster.

Proposed new §507.59, Medical Services and Home Dialysis During a Public Health Disaster, specifies the requirements and protocols for a currently licensed ESRD facility to use telemedicine for certain patient visits during certain public health disaster situations. This section also adds more flexibility for the timing of certain monitoring visits for home dialysis patients during certain public health disaster situations.

Proposed new §507.60, Staffing Table, updates and clarifies staffing ratios for ESRD facilities for nursing, direct care, and clinical staff.

Proposed new Subchapter E, Requirements for Dialysis Technicians, contains §§507.71 - 507.75.

Proposed new §507.71, General Requirements, adds a requirement for a facility to have written physician standing orders authorizing delegation of responsibilities for a dialysis technician. The section also adds requirements for facilities allowing a dialysis technician, other than a licensed vocational nurse, to initiate or discontinue dialysis via a central venous catheter or manipulate a central venous catheter.

Proposed new §507.72, Training Curricula and Instructors, adds requirements for facilities allowing a dialysis technician, other than a licensed vocational nurse, to initiate or discontinue dialysis via a central venous catheter or manipulate a central venous catheter.

Proposed new §507.73, Competency Evaluation, adds a competency skills checklist for verifying a dialysis technician trainee's knowledge and skills for initiating or discontinuing dialysis via a central venous catheter or manipulating a central venous catheter.

Proposed new §507.74, Documentation of Competency, updated the requirement for a facility to have a newly hired experienced dialysis technician complete a written test and competency checklist within 80 work hours after hire.

Proposed new §507.75, Prohibited Acts, prohibits dialysis technicians from engaging in certain acts. The updated proposed section also allows a dialysis technician to initiate or discontinue dialysis via a central catheter and manipulate a central catheter, which is prohibited by current 25 TAC §117.65.

Proposed new Subchapter F, Inspections, Investigations and Enforcement, contains §§507.81 - 507.93.

Proposed new §507.81, Integrity of Inspections and Investigations, places limits on an ESRD facility's authority to record HHSC interviews and internal discussions.

Proposed new §507.82, Inspections, describes the requirements of the HHSC inspection process for an ESRD facility.

Proposed new §507.83, Complaint Investigations, describes the requirements of the HHSC investigation process after receiving a complaint against an ESRD facility.

Proposed new §507.84, Notice, informs an ESRD facility of the required timeframes regarding responding to deficiencies, plans of correction, and the provision of additional evidence.

Proposed new §507.85, Professional Conduct, notifies an ESRD facility that HHSC will report enforcement actions to appropriate licensing authorities.

Proposed new §507.86, Complaint Against an HHSC Representative, informs an ESRD facility about registering a complaint against an HHSC representative.

Proposed new §507.87, Corrective Action Plan, informs an ESRD facility about corrective action plans and makes necessary updates to ensure consistency with the updated inspection and investigation procedures and compliance with current statute, which includes a level one, level two, and level three corrective action plan. Additionally, HHSC approves a monitor for a corrective action plan with requirements for both monitors and facilities.

Proposed new §507.90, Enforcement, describes enforcement procedures HHSC may take when an ESRD facility commits a violation of statute or rule.

Proposed new §507.91, Emergency Orders, allows HHSC to suspend a license issued if there is reasonable cause due to conduct that could create an immediate danger to public health and safety.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed. The proposed new rules require a fee if an applicant submits a late license renewal application. The amount of the late fee varies because it is based on the number of chairs in the facilities. HHSC lacks the data to estimate how many applicants will submit a late renewal application and be subject to the fee in any year and, therefore, cannot provide an estimate of the possible new revenue from this proposal.

There may also be an estimated additional cost to state or local governments as a result of enforcing and administering the rule as proposed. HHSC lacks sufficient data to provide an estimate of the cost amounts as they are specific to applicable ESRD facilities that are owned or operated by state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

(4) the proposed rules will require an increase in fees paid to HHSC;

(5) the proposed rules will create new regulations;

(6) the proposed rules will not expand, limit or repeal existing regulations;

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities if they submit a late renewal application subject to the proposed fees.

These entities may also have costs to comply with updated sanitation and water quality requirements. However, many ESRD facilities have likely already implemented the updated sanitation and water quality requirements in order to comply with federal and industry-standard guidelines.

HHSC lacks sufficient data to estimate how many ESRD facilities meet the definition of a small business, micro-business, or rural community; however, there are approximately 751 currently licensed ESRD facilities.

HHSC has also determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of ESRD facility patients and would not be consistent with the health, safety, and environmental and economic welfare of the state in providing adequate oversight to ESRD facilities or compliance with the Texas Health and Safety Code.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from more accurate and up-to-date rule language and statutory and rule references, greater clarity and accuracy of the ESRD facility rules, improved organization and readability, and greater consistency with existing statutes and HHSC rules.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because these entities may incur an additional cost if they submit a late renewal application subject to the proposed fees and may also have costs to comply with updated sanitation and water qual-

ity requirements. HHSC lacks the data to provide an estimate of the amounts as they are specific to individual ESRD facilities. However, many ESRD facilities have likely already implemented the updated sanitation and water quality requirements in order to comply with federal and industry-standard guidelines.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R077" in the subject line.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 26 TAC §507.1, §507.2

##### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §524.0005, 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 Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The new rules implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

##### §507.1. Purpose.

(a) The chapter's purpose is to implement Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities), which requires an end stage renal disease facility providing routine, repetitive, outpatient dialysis to be licensed by the Texas Health and Human Services Commission.

(b) This chapter provides minimum standards for:

- (1) equipment used by the facility;
- (2) water treatment and reuse;
- (3) sanitary and hygienic conditions;
- (4) quality assessment and performance improvement;
- (5) indicators of quality of care;

(6) provision and coordination of treatment and services;

(7) professional staff qualifications and supervision, including physicians and other personnel;

(8) clinical records, curricula, and instructors used to train dialysis technicians;

(9) competency evaluation of dialysis technicians;

(10) enforcement standards;

(11) fire prevention and safety requirements; and

(12) physical plant and construction requirements.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, standards, rules, regulations, and ordinances. The more stringent standard, code, or requirement shall apply when a difference in requirements exists.

##### §507.2. Definitions.

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

(1) Action level--The point at which ESRD facility staff shall take steps to interrupt the trend towards unacceptable levels.

(2) Administrator--An individual responsible for implementation and proper application of policies, programs, and services established for the ESRD facility.

(3) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(4) Adverse event--An event that results in unintended harm to the patient because of an act of commission or omission by the ESRD facility or ESRD facility staff rather than by the patient's underlying disease or condition or those events affecting patient's family members, visitors, or staff.

(5) Applicant--The person who seeks an ESRD facility license from the Texas Health and Human Services Commission (HHSC) and is legally responsible for the ESRD facility's operation, whether by lease or ownership.

(6) Architectural inspection--An inspection HHSC conducts to ensure compliance with all applicable federal and state regulations relating to the ESRD facility physical plant and to verify project construction aligns with submitted contract construction documents.

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

(8) Biofilm--A coating on surfaces consisting of microcolonies of bacteria embedded in a protective extracellular matrix. The matrix, a slimy material secreted by the cells, protects the bacteria from antibiotics and disinfectants.

(9) Business day--Any weekday from Monday through Friday that is not a state or federal holiday.

(10) Calendar day--All days, including weekends and holidays.

(11) Caregiver--A person trained, qualified, and competent in using a device for the selected modality prescribed to the patient.

(12) Charge nurse--A practicing licensed registered nurse in accordance with applicable provisions of law who is responsible for making daily staff assignments based on patient needs, providing immediate supervision and support of patient care, monitoring patients for changes in condition, and communicating with the physician, dietitian, and social worker regarding patient needs.

(13) Closed system--A dialysis system for hemodialysis or peritoneal dialysis, that uses sterile manufactured bagged dialysate or dialysate solution.

(14) CMS--Centers for Medicare and Medicaid Services.

(15) Competency--Demonstrated ability to carry out specified tasks or activities with reasonable skill and safety that adheres to the prevailing standard of practice.

(16) Conditions for Coverage (CfCs)--The minimum health and safety rules that all Medicare and Medicaid participating ESRD facilities must meet. The basic health and safety requirements that an ESRD facility must meet to receive payment from the Medicare program.

(17) Conventional dialysis system--The ESRD facility's water treatment components and single pass dialysis machines.

(18) Core staff members--The ESRD facility's medical director, supervising nurse, dietitian, social worker, administrator, and approved biomedical representative.

(19) Corrective action plan--An alternative to enforcement action, as outlined in Texas Health and Safety Code §251.061 (relating to Corrective Action Plan).

(20) Delegation--Transfer of the authority to perform a selected task or activity in a selected situation to a qualified and properly trained individual.

(21) Dialysate--An aqueous fluid made from water and concentrate, containing electrolytes and usually dextrose that exchanges solutes with blood during hemodialysis that is delivered to the dialyzer by the dialysate supply system. This term does not include peritoneal dialysis fluid.

(22) Dialysate supply system--Devices that prepare dialysate on line from water and concentrates, or store and distribute premixed dialysate; circulate the dialysate through the dialyzer; monitor the dialysate for temperature, conductivity, pressure, flow, and blood leaks; and prevent dialysis during disinfection or cleaning modes. The term includes reservoirs, conduits, proportioning devices for the dialysate, and monitors, associated alarms, and controls assembled as a system for the characteristics listed above. The dialysate supply system is often an integral part of single patient dialysis machines.

(23) Dialysis--A process to remove dissolved substances from a patient's body by diffusion, osmosis, and convection (ultrafiltration) from one fluid compartment to another across a semipermeable membrane.

(24) Dialysis technician--An individual who is not a registered nurse or physician and provides dialysis care under the supervision of a registered nurse or physician. This individual may also be known as a Patient Care Technician (PCT) or Certified Clinical Hemodialysis Technician (CCHT).

(25) Dietitian--An individual who:

(A) is currently licensed by the Texas Department of Licensing and Regulation under the laws of this state as a licensed dietitian;

(B) is a registered dietitian; and

(C) has one year of experience in clinical dietetics after becoming a registered dietitian.

(26) Direct care staff--Staff who provide hands-on dialysis care to specifically assigned patients during their dialysis treatment (e.g., registered nurse, licensed vocational nurse, patient care technician). These staff members fulfill the patient to staff ratio requirement. This does not include the Charge Nurse, as shown in §507.60 of this chapter (relating to Staffing Table).

(27) Education--Presenting and teaching informative materials, including to licensed ESRD facility's patients, about treatment modalities, options, and overall health literacy. An ESRD facility may conduct education individually or in a group setting.

(28) Empty bed contact time (EBCT)--A measure of how much contact occurs between particles, such as activated carbon, and water as the water flows through a bed of the particles.  $EBCT = (7.48 \times V)/Q$  where V is the volume of particles in the bed (feet), Q is the flow rate of the water through the bed (gallon/minute), and 7.48 is the conversion factor for gallons to feet.

(29) End stage renal disease--The stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life (also known as chronic kidney disease stage V).

(30) End stage renal disease (ESRD) facility--A facility that provides dialysis treatment or dialysis training and support to individuals with end stage renal disease.

(31) ESRD Network--An organization consisting of all Medicare-approved ESRD facilities in the designated geographic area specified by CMS. The network is operated by a not-for-profit corporation that functions under a federal government contract. The network organization is the administrative governing body to the network and acts as a liaison to the Federal government. The network helps ensure quality of care and coordinated delivery of end stage renal disease services.

(32) Endotoxin--Lipopolysaccharides consisting of a polysaccharide chain covalently bound to lipid A and the major component of the outer cell wall of gram-negative bacteria.

(33) Endotoxin-retentive filter--Membrane filter specifically proven to remove bacteria and endotoxins.

(34) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(35) Facility--A contiguous, identifiable location HHSC approved for use as a licensed ESRD facility that is either a freestanding building or a single, distinct, contiguous space in a multi-tenant building.

(36) Full-time--The time period established by an ESRD facility as a full working week, as defined and specified in the facility's policies and procedures.

(37) Full-time equivalent--Work time equivalent to 2,080 hours per 12 consecutive months.

(38) Governing body--The governing authority of a licensed ESRD facility responsible for organization, management, control, operation, and appointment of medical staff. The governing body includes the medical director and representatives of the ESRD



facility's owner. The governing body has the overall legal responsibility for the ESRD facility's governance and operation.

(39) Health care facility--Any type of facility or home and community support services agency licensed to provide health care in any state or certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(40) Home dialysis service--Dialysis performed at home by an end stage renal disease patient or caregiver who has completed an appropriate course of training, as described in §507.53 of this chapter (relating to Home Dialysis Service).

(41) Hospital--A entity licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals), or when exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code §1395 et seq.).

(42) In-center dialysis--Dialysis provided within the ESRD facility's licensed patient care area.

(43) Inspection--A survey conducted by a representative of HHSC to determine whether an applicant or licensee is in compliance with this chapter and Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities).

(44) Integrated hemodialysis system--A preconfigured hemodialysis system, as designated by the United States Food and Drug Administration (FDA), in which dialysis-quality water and concentrate is prepared and used at the patient's station in the approved and licensed dialysis unit. In licensed facilities that use this modality of delivery of dialysis services, the conventional water distribution system may not be necessary, as each unit contains its own water purification system, produces dialysate, and makes individualized adjustments as needed.

(45) Interdisciplinary team (IDT)--A group composed of the primary dialysis physician, registered nurse, dietitian, and social worker who are responsible for planning care for the patient.

(46) Intermediate-level disinfection--A surface treatment using chemical germicides or disinfectants that are capable of inactivating various classes of microorganisms including viruses (primarily medium to large viruses and lipid-containing viruses), fungi, and actively growing bacteria (including tubercle bacteria) when such chemical germicides or disinfectants are used in accordance with the manufacturer's directions for use or per established guidelines. Intermediate-level disinfection is generally not effective in inactivating or eliminating bacterial endospores. Examples of intermediate-level disinfectants include bleach, 70 - 90 percent ethanol or isopropanol, and certain phenolic or iodophor preparations.

(47) Licensed nurse--A registered nurse or licensed vocational nurse.

(48) Licensed vocational nurse (LVN)--An individual who is currently licensed under Texas Occupations Code Chapter 301 (relating to Nurses) by the Texas Board of Nursing as a licensed vocational nurse, or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state, and who may provide dialysis treatment after meeting the competency requirements specified for dialysis technicians.

(49) Medical director--A physician who:

(A) is board certified in internal medicine by the American Board of Internal Medicine or in pediatrics by the American Board of Pediatrics; has completed a board-approved training program in

nephrology; and has at least 12 months of experience providing care to patients receiving dialysis; or

(B) is board certified in nephrology or pediatric nephrology and has at least 12 months of experience providing care to patients receiving dialysis.

(50) Medical review board--A review board appointed by the ESRD Network that has a contract with CMS.

(51) Modality--A particular treatment option and settings for a patient with end stage renal disease, for example, in-center hemodialysis, home hemodialysis, home peritoneal dialysis, self-care dialysis, nocturnal dialysis, or transplantation.

(52) Owner--The legal or governmental entity that holds or will hold a license issued under this chapter and Texas Health and Safety Code Chapter 251.

(53) Patient--An individual receiving dialysis treatment or training from an ESRD facility.

(54) Patient plan of care--Documentation of the interactive process by which the interdisciplinary team and the patient and family members or guardian develop and implement a plan, based on the assessments performed by the interdisciplinary team members, to assist the end stage renal disease patient in managing the disease and its complications.

(55) Pediatric patient--An individual under 18 years of age.

(56) Person--An individual, corporation, or other legal entity.

(57) Physician--An individual who is licensed by the Texas Medical Board to practice medicine under Texas Occupations Code, Subtitle B, Title 3.

(58) Physician assistant--An individual licensed as a physician assistant by the Texas Physician Assistant Board.

(59) Plan of Correction (POC)--A written plan developed by the ESRD facility that lists specific actions the ESRD facility will take to correct specific deficiencies of state licensing regulations.

(60) Prelicensure conference--A meeting between HHSC staff and the administrator or licensed professional listed on the license application to review licensure standards and provide consultation before HHSC issues a license. The prelicensure conference is not an architectural review feasibility conference.

(61) Product water--Water produced by a water treatment system or by an individual component of a system.

(62) Progress note--A physical or electronic record of an event dated and signed by facility staff, which summarizes facts about the patient's care and the patient's response during a given time period.

(63) Pyrogen--A fever producing substance. Pyrogens are most often lipopolysaccharides of gram-negative bacterial origin.

(64) Quality assessment and performance improvement (QAPI)--An ongoing program that measures, analyzes, and tracks quality indicators related to improving health outcomes. The program implements improvement plans and evaluates the implementation until resolution is achieved.

(65) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a registered nurse, or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(66) Second-chance patient--A patient voluntarily or involuntarily discharged from a facility, or pending involuntary discharge due to behavioral or compliance issues, chosen by the ESRD Network to participate in the second chance program set forth by the ESRD Network who agrees to receive treatment at another licensed ESRD facility. The patient will have specific behavioral expectations compliance expectations, or both, that shall be achieved and maintained to successfully participate in the second chance program and remain a patient at the accepting facility.

(67) Self-care patient--An in-center patient who performs all or part of their dialysis treatment, including, at a minimum, set up and tear down of machinery, holding their own site at termination of treatment, and taking and recording their own vital signs.

(68) Self-care service--A service where patients participate in their self-care with supervision by a qualified registered nurse as approved and delegated by the medical director.

(69) Single patient device--An alternate method of providing hemodialysis, as designated by the FDA and prescribed to a patient for their individual use, during their need for dialysis.

(70) Social worker--An individual who:

(A) is currently licensed by the Texas Behavioral Health Executive Council as a social worker under Texas Occupations Code Chapter 505 (relating to Social Workers), and holds a master's degree from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has at least two years of work experience as a social worker, one year of which was in a dialysis facility or transplantation program before September 1, 1976, and has established a consultative relationship with a social worker who has a master's degree from a graduate school of social work accredited by the Council on Social Work Education.

(71) Sorbent regeneration system--A system that regenerates dialysate by passing the dialysate through substances that restore the dialysate to a condition comparable to fresh dialysate.

(72) Station--An area in the ESRD facility in which a patient receives in-center hemodialysis treatment, or dialysis instruction, such as home hemodialysis training or home peritoneal dialysis training.

(73) Supervising nurse (Director of Nursing)--A registered nurse who has:

(A) clinical experience including:

(i) at least 12 months of clinical nursing experience as an RN, and

(ii) an additional 6 months of experience in dialysis obtained within the last 24 months, or

(B) at least 18 months experience as an RN and holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis.

(74) Supervision--Authoritative procedural guidance by a qualified individual for accomplishing a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(A) Immediate supervision--The supervisor is observing the task or activity as it is performed.

(B) Direct supervision--The supervisor is at the licensed ESRD facility site but not necessarily immediately physically present where the task or activity is being performed.

(C) Indirect supervision--The supervisor is not at the licensed ESRD facility site but is accessible by two-way communication, able to respond to an inquiry when made, and readily available for consultation.

(75) Technical supervisor--The supervisor of the ESRD facility's mechanical, reuse, and water treatment systems.

(76) Telehealth or telehealth service--A health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology, in accordance with Texas Occupations Code Chapter 111 (relating to Telemedicine, Teledentistry, and Telehealth).

(77) Telemedicine or telemedicine medical service--A health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology, in accordance with Texas Occupations Code Chapter 111.

(78) Training (Patient)--The process of developing, practicing, and maintaining specific skills of an individual patient related to the patient's treatment modality, including self-care, home hemodialysis, peritoneal dialysis, and other modalities. Patient training must take place in person.

(79) Training (Staff)--The process of teaching tasks through on-the-job experience or instruction from an individual who has the capacity through education or experience to perform the delegated task or activity.

(80) Transitional care--Services to transition a patient from a current modality to a self-care modality in-center or at home.

(81) Transitional services--In-center dialysis intended to transition a patient from a current modality to a self-care modality whether in-center or at home.

(82) Ultrafilter--A membrane filter with a pore size in the range of 0.001 to 0.05 micrometer. Performance is usually rated in terms of a nominal molecular weight cut off (MWCO), which is defined as the smallest molecular weight species for which the filter membrane has more than 90 percent rejection.

(83) Water distribution system--Storage tanks and piping used to distribute the product water from the purification cascade to or from its point of use, including individual hemodialysis machines, dialyzer reprocessing equipment, and dialysate concentrate preparation systems.

(84) Water treatment system--A collection of water purification devices and associated piping, pumps, valves, gauges, and other related components that together produce purified water for hemodialysis applications and deliver it to the point of use.

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

Filed with the Office of the Secretary of State on May 21, 2025.



## SUBCHAPTER B. LICENSING REQUIREMENTS

### 26 TAC §§507.11 - 507.24

#### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §524.0005, 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 Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The new rules implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

#### §507.11. General Requirements for a License.

(a) All providers who provide dialysis services, regardless of affiliation or modality, shall be licensed. Patients receiving home dialysis services shall be under the purview of a licensed end stage renal disease (ESRD) facility.

(b) A facility shall obtain a license before admitting patients.

(c) A facility shall prominently and conspicuously display the license in a public area of the facility that is readily visible to patients, employees, and visitors.

(d) A facility shall not alter the ESRD facility license.

(e) An ESRD facility license is nontransferable. The facility shall comply with the provisions of §507.12 of this subchapter (relating to Application and Issuance of Initial License) in the event of a change in the ownership.

(f) The Texas Health and Human Services Commission (HHSC) issues an ESRD facility license for the facility site and person named in the application.

(g) An ESRD facility may share a building with other licensed health care facilities.

(1) The ESRD facility shall be licensed separately from the other licensed facilities.

(2) No identifiable part of the building may be dually licensed by more than one person.

(h) The following facilities are not required to be licensed under this chapter:

(1) a home and community support services agency licensed under Texas Health and Safety Code Chapter 142 (relating to Home and Community Support Services), with a home dialysis designation;

(2) a hospital licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals) that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services due to a disaster declared by the governor or a federal disaster declared by the president of the United States occurring in this state or another state during the term of the disaster declaration;

(3) a hospital operated by, or on behalf of, the state as part of the managed health care provider network established under Texas Government Code Chapter 501 (relating to Inmate Welfare) that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services while the individual is serving a term of confinement in a facility operated by, or under contract with, the Texas Department of Criminal Justice;

(4) an ESRD facility operated by, or on behalf of, the state as part of the managed health care provider network established under Texas Government Code Chapter 501 that provides dialysis only to individuals receiving those services while serving a term of confinement in a facility operated by, or under contract with, the Texas Department of Criminal Justice; or

(5) the office of a physician unless the office is used primarily as an ESRD facility.

#### §507.12. Application and Issuance of Initial License.

(a) An applicant shall comply with this subsection before receiving an initial license.

(1) The applicant shall submit an accurate and complete application form to the Texas Health and Human Services Commission (HHSC) in accordance with HHSC instructions, including evidence that:

(A) the facility has at least one qualified physician on staff; and

(B) each dialysis technician on staff completed the training program requirements as required by §507.72 of this chapter (relating to Training Curricula and Instructors).

(2) The applicant shall submit the appropriate license fee, as required in §507.20 of this subchapter (relating to Fees).

(3) The applicant for a new or existing facility that is increasing the number of in-center dialysis treatment stations shall have an isolation room, as specified in the current CMS Conditions for Coverage or shall provide a CMS waiver.

(4) The applicant shall attend a precicensure conference conducted by HHSC to review facility staff qualifications and licensure rules, and to receive consultation before the on-site licensure inspection.

(A) HHSC may waive the precicensure conference requirement at its discretion.

(B) When there is a change in the supervising nurse before the facility opens, the applicant shall attend an additional precicensure conference.

(5) The applicant shall submit a copy of a fire safety inspection that:

(A) indicates approval by an individual certified by the Texas Commission on Fire Protection; and

(B) is dated no earlier than 12 months before the facility licensure date.

(6) The facility physical plant shall meet the requirements set forth in Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements) before HHSC issues an end stage renal disease (ESRD) facility license for a newly constructed ESRD facility or an ESRD facility converted from a non-ESRD facility building.

(7) The applicant shall submit to HHSC, in accordance with HHSC instructions, a complete chemical analysis of the product water and reports to verify that bacteriological and endotoxin levels of product water and dialysate are compliant with §507.33 of this chapter (relating to Water Treatment) and §507.34 of this chapter (relating to Dialysate). The facility shall keep the reports on file at the facility and make the reports available to HHSC staff during an on-site inspection or when requested by HHSC.

(b) When HHSC determines the applicant has complied with subsection (a) of this section, HHSC issues the license to the applicant.

(1) The license is effective on the issue date.

(2) The license expires on the last day of the month two years after the issue date.

(c) HHSC will not process an application until HHSC receives the fee required in subsection (a)(2) of this section.

(d) An applicant may withdraw their application by notifying HHSC in accordance with HHSC instructions.

(e) If the applicant does not complete all requirements of subsection (a) of this section within six months after the date HHSC receives the application and appropriate fee, HHSC will consider the application withdrawn. The applicant must reapply for an initial license in accordance with this section.

(f) Any fee paid for a withdrawn application is nonrefundable, as indicated by §507.20(a) of this subchapter (relating to Fees).

(g) Denial of a license is governed by §507.90 of this chapter (relating to Enforcement).

(h) Within the first two years of licensure, HHSC inspects the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter.

(1) HHSC may conduct this inspection at the same time as the inspection to determine compliance with Code of Federal Regulations Title 42, Part 494 (relating to Conditions for Coverage for End-Stage Renal Disease Facilities).

(2) After the facility admits and provides services to at least one patient, the facility shall request an on-site inspection in accordance with HHSC instructions. An HHSC representative will conduct the inspection while patients are in the facility being dialyzed.

(3) At the time of inspection, the facility shall provide services to at least one patient in each modality the facility requested in their application. An HHSC representative may interview patients at the time of the inspection, either in the patient's home or at the facility. An HHSC representative may interview peritoneal and home hemodialysis patients trained or retrained at the facility as part of the inspection.

#### §507.13. License Renewal.

(a) The Texas Health and Human Services Commission (HHSC) sends written notice of license expiration to a facility at least 90 calendar days before the expiration date of a license. If the facility

does not receive the notice, it is the facility's duty to notify HHSC and request a renewal notice.

(b) HHSC renews the license of a facility that meets the minimum requirements for a license.

(c) The facility shall submit to HHSC before the license expiration date:

(1) a complete and accurate renewal application form;

(2) a copy of two fire safety inspections indicating approval by an individual certified by the Texas Commission on Fire Protection, which includes:

(A) one approved within the 12 months before the submission date or the license expiration date, whichever is earlier, and

(B) one approved within the last 13 - 24 months before the submission date or the license expiration date, whichever is earlier; and

(3) the license renewal fee.

(d) HHSC may conduct an inspection before issuing a renewal license in accordance with §507.82 of this chapter (relating to Inspections).

(e) A renewal license is valid for two years from the previous expiration date.

(f) A facility must submit a complete renewal application, including all required documents and the fee, at least 30 days before the license expiration date.

(1) If the facility does not submit the completed renewal application, required documents, and license renewal fee until after the license expiration date, the facility must pay a late fee of half of the renewal fee based on the facility's number of stations, as listed in §507.20(c) of this subchapter (Relating to Fees).

(2) If the facility does not submit the completed renewal application, required documents, license renewal fee, and late fee within 30 days after the expiration date, HHSC notifies the facility to immediately cease operation.

(A) If HHSC notifies a facility to immediately cease operation, the facility must apply for and receive an initial license under §507.12 of this subchapter (relating to Application and Issuance of Initial License) to resume services.

(B) If HHSC requires the facility to apply for an initial license, the facility shall not provide services until HHSC issues the initial license.

(3) HHSC issues a renewal license only after the facility submits the renewal application, required documents, license renewal fee and any applicable late fee.

(g) If the facility does not wish to provide services after the license expiration date, the facility must close in accordance with §507.18 of this subchapter (relating to Closure).

(h) After the license expiration date, if the facility does not correct a deficiency in the renewal application within 10 business days after being notified, HHSC may assess a late fee as described in subsection (f)(1) of this section, consider the renewal application withdrawn, or both. Any fee paid for a withdrawn renewal application is nonrefundable, as indicated by §507.20(a) of this subchapter.

(i) Denial of a license is governed by §507.90 of this chapter (relating to Enforcement).

#### §507.14. Change of Ownership.

(a) A change of ownership occurs when there is a change in the person legally responsible for the facility's operation, whether by lease or ownership.

(1) If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except for the following notification requirement. The corporation shall notify the Texas Health and Human Services Commission (HHSC) within 10 calendar days after the effective date of the name change.

(2) The sale of stock of a corporate licensee does not cause this subsection to apply.

(3) The new owner shall submit a license application, documents, and fee in accordance with §507.12 of this subchapter (relating to Application and Issuance of Initial License) to HHSC before the date of the change of ownership or within five calendar days after the change of ownership date.

(4) The facility shall not provide services until HHSC issues the initial license.

(5) HHSC may waive the inspection required by subsection (c) of this section.

(6) When HHSC determines the new owner complied with provisions of §507.12 of this subchapter, HHSC issues a license, which is effective on the date of the change of ownership.

(7) The license expiration date shall be in accordance with §507.12(b)(2) of this subchapter.

(8) The previous owner's license shall be void on the effective date of the new owner's license, and the facility shall return the voided license to HHSC.

(b) The facility shall comply with §507.12(a)(7) of this subchapter.

(c) When HHSC determines the facility has complied with this section, HHSC issues a revised license to the applicant, when applicable.

(d) Applications under this section are subject to §507.12(d) and (e) of this subchapter.

(e) During the initial licensing period, HHSC may inspect the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter in accordance with §507.12(h) of this subchapter.

#### §507.15. Relocation.

(a) A facility planning to relocate shall notify the Texas Health and Human Services Commission (HHSC) in accordance with HHSC instructions at least 90 calendar days before the planned relocation. Relocations shall be within the state of Texas.

(1) The facility shall submit a license application in accordance with §507.12 of this subchapter (relating to Application and Issuance of Initial License) to HHSC before relocation.

(2) HHSC may waive the inspection required by §507.12 of this subchapter.

(3) The license is effective on the issue date.

(4) The license expires on the last day of the month two years after the issue date.

(5) The previous facility license is void once the relocation is effective and after the facility ceases all services at the previous location. The facility must return the voided license to HHSC.

(b) The facility shall comply with §507.12(a)(7) of this subchapter.

(c) When HHSC determines the facility complied with this section, HHSC issues a revised license to the applicant, when applicable.

(d) Applications under this subsection are subject to §507.12(d) and (e) of this subchapter.

(e) Within the first two years of licensure after relocation, HHSC may inspect the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter in accordance with §507.12(h) of this subchapter.

#### §507.16. Change in Status.

(a) A facility shall notify the Texas Health and Human Services Commission (HHSC) in writing in accordance with HHSC instructions at least 90 calendar days before:

(1) any construction;

(2) addition, alteration, renovation, or remodeling;

(3) equipment and finish upgrade;

(4) conversion of a licensed or previously licensed facility to a different license designation;

(5) demolition;

(6) retrofitting a function, such as changing end stage renal disease treatment modality or training station designations or changing an invasive procedural service; or

(7) change of services, including change in treatment modality, station type, and station number.

(b) A facility shall notify HHSC in writing and in accordance with HHSC instructions within 10 calendar days following:

(1) a change in the facility name, mailing address, facility administrator email address, telephone number, or fax number;

(2) a change of administrator; or

(3) the facility ceasing operation.

(c) A facility shall request and receive HHSC written approval in accordance with HHSC instructions before changes in services or the number of stations.

(1) The facility shall request HHSC approval at least 90 calendar days before the planned change and must receive HHSC approval before implementing the changes.

(2) The change shall comply with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(3) For an additional service or increase in stations, HHSC may require the facility to provide evidence of appropriate staffing, policies and procedures, or any other documentation it determines is necessary to evaluate the request.

(4) For an increase in stations, the facility shall also submit written evidence that the water treatment system is of sufficient size to accommodate the increase and maintain a safe water supply.

(5) HHSC may conduct an on-site inspection before acting on the requested changes.

(6) The facility shall comply with §507.12(a)(7) of this subchapter (relating to Application and Issuance of Initial License).

(7) HHSC sends the facility written notice of HHSC approval or denial of the requested change.

(8) All existing facilities increasing the number of in-center dialysis treatment stations shall have an isolation room, as specified in the current CMS Conditions for Coverage, or shall provide a waiver. Refer to isolation room requirements in Subchapter Z of this chapter.

#### §507.17. Inactive Status.

A facility that stops offering services under its license shall first ensure the safety of the facility's patients, staff, and visitors, then inform the Texas Health and Human Services Commission (HHSC) and request inactive status within five calendar days of ceasing operations, in accordance with HHSC instructions. HHSC may close a license if the facility does not offer services for more than 60 calendar days unless the facility sends a written request to place the license on inactive status.

(1) To be eligible for inactive status, a facility must be in good standing with no pending legal action or investigation.

(2) The facility is responsible for any license renewal requirements or fees, and for proper maintenance of patient records, while the license is inactive.

(3) A license may not remain inactive for more than 60 calendar days without an approved extension from HHSC.

(4) A facility that does not reactivate its license within 60 calendar days after it stopped offering services may request a single 60-day renewal period of the inactive status from HHSC through a written request in accordance with HHSC instructions.

(5) A facility may request HHSC to place the license on inactive status once during each two-year licensing period.

(6) If the facility does not reactivate its license or request a renewal for inactive status by the 60th calendar day after the facility stopped offering services, HHSC may consider the facility closed and the license invalid.

#### §507.18. Closure.

A license becomes invalid when a facility closes. A facility shall notify the Texas Health and Human Services Commission (HHSC) in writing in accordance with HHSC instructions before or immediately upon facility closure.

(1) The facility shall discharge or transfer all patients before the facility closes.

(2) The facility shall dispose of or store medical records in compliance with federal and state law as well as HHSC rules.

(3) When notifying HHSC of the facility closure, the facility shall inform HHSC how the facility disposed of or stored patient records.

(4) The facility shall return the license certificate to HHSC immediately after the facility closes.

#### §507.19. Time Periods for Processing and Issuing a License.

(a) The application receipt date for an initial license or a renewal license is the date the Texas Health and Human Services Commission (HHSC) receives the application and fee.

(b) An initial license application is complete when HHSC receives, reviews, and finds acceptable the information described in §507.12 of this subchapter (relating to Application and Issuance of Initial License).

(c) A renewal license application is complete when HHSC receives, reviews, and finds acceptable the information described in §507.13 of this subchapter (relating to License Renewal).

(d) An application for a change of ownership or relocation is complete when HHSC receives, reviews, and finds acceptable the information described in §507.14 of this subchapter (relating to Change of Ownership) or §507.15 of this subchapter (relating to Relocation).

(e) An application for a request in change in services or number of stations is complete when HHSC receives, reviews, and finds acceptable the information described in §507.16 of this subchapter (relating to Change in Status). HHSC acknowledges receipt of a request for change in services or number of stations within 15 calendar days after receipt.

(f) HHSC processes an end stage renal disease (ESRD) facility initial license or a renewal license in accordance with the following time periods.

(1) After receiving an application, HHSC takes one of the following actions within 45 calendar days:

(A) issues a license for a complete and approved application; or

(B) for an incomplete application, sends a written notice to the applicant describing the documents or information required to complete the application.

(2) After HHSC determines an application is complete per subsections (b) - (e) of this section, HHSC issues a license for an approved application within 45 calendar days.

(g) If HHSC does not process an application in the time periods stated in subsection (f) of this section, the applicant has the right to request HHSC to fully reimburse the fee paid. If HHSC does not agree that the established periods have been violated or finds good cause, in accordance with subsection (h) of this section, existed for exceeding the established periods, HHSC denies the request.

(h) The following circumstances are good cause for HHSC exceeding the established time period:

(1) the number of applications for licenses to be processed exceeds by 15 percent, or more, the number processed in the same calendar quarter the preceding year;

(2) another public or private entity utilized in the application process caused the delay; or

(3) other conditions existed which gave good cause for HHSC exceeding the established periods.

(i) If HHSC denies the request for full reimbursement authorized by subsection (g) of this section, the applicant may appeal the decision to the executive commissioner. The applicant may request reimbursement in writing to the executive commissioner of up to the amount of all filing fees paid to HHSC. The executive commissioner shall make a final decision based on facts related to the application processing and good cause and provide written notification of the decision to the applicant.

#### §507.20. Fees.

(a) All fees paid to the Texas Health and Human Services Commission (HHSC) are nonrefundable.

(b) All fees shall be paid by check or money order made payable to HHSC.

(c) The fees for both initial and renewal license applications are:

- tions; (1) \$3,500 for facilities licensed for 1 to 10 dialysis stations;
- tions; (2) \$4,300 for facilities licensed for 11 to 20 dialysis stations;
- tions; (3) \$5,100 for facilities licensed for 21 to 30 dialysis stations;
- tions; and (4) \$5,900 for facilities licensed for 31 to 40 dialysis stations; and
- tions. (5) \$6,700 for facilities licensed for 41 or more dialysis stations.

(d) All licenses are valid for 24 months.

(e) HHSC collects subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online, in accordance with Texas Government Code §2054.111 (relating to Use of State Electronic Internet Portal Project) and §2054.252 (relating to State Electronic Internet Portal Project).

(f) If the Texas Comptroller of Public Accounts notifies HHSC that a fee payment in connection with a license application did not clear, HHSC informs the applicant and stops processing that license application until the payment clears.

#### §507.21. Exceptions to These Rules.

(a) An end stage renal disease (ESRD) facility may request a temporary exception from a requirement in this chapter. A temporary exception may be related to alternative concepts, methods, procedures, techniques, or United States Food and Drug Administration-approved equipment, or for conducting pilot projects or research.

(b) Exceptions related to operating a facility during an emergency or disaster situation are governed by §507.22 of this subchapter (relating to Exceptions During Emergency or Disaster Situations).

(c) A facility submitting a request for a temporary exception to a requirement in this chapter shall do so by:

- (1) submitting a written request to the Texas Health and Human Services Commission (HHSC);
- (2) identifying the specific rule for which the facility requests an exception;
- (3) describing in detail the specific circumstances the facility administration believe justify the exception;
- (4) describing in detail what alternatives the facility considered, if any, and why the facility did not select any of the identified alternatives, including compliance with the rule;
- (5) demonstrating that the proposed exception is desirable to maintain or improve the health and safety of the patients, will not jeopardize patient health and safety, and will maintain patient access to care; and
- (6) describing the proposed exception duration.

(d) A facility shall submit a request for an exception to this chapter to HHSC in accordance with HHSC instructions.

(e) HHSC may conduct an inspection and may consult with the medical review board before approving an exception.

(f) HHSC responds to an exception request within 90 calendar days after receipt. On finding that the facility satisfied the conditions of this section, HHSC may grant an exception and shall specify the exception duration when notifying the facility of the granted exception.

(g) The facility may implement an exception only after receiving written approval from HHSC.

(h) Granting of an exception is public information, is subject to disclosure, and may be posted on the HHSC website.

#### §507.22. Exceptions During Emergency or Disaster Situations.

(a) An end stage renal disease facility shall submit a request for an exception during an emergency or disaster situation to the Texas Health and Human Services Commission (HHSC). To request an exception during an emergency or disaster situation, a facility:

(1) shall make the request in accordance with HHSC instructions;

(2) shall develop an action plan to resolve the situation, including any staffing crisis;

(3) shall submit the action plan to HHSC within 60 calendar days after HHSC grants the exception;

(4) shall monitor outcome data related to quality of care and report these outcomes monthly to HHSC during the granted exception period, including granted exception periods for staffing requirements; and

(5) may request an exemption from clinical records for evacuees, except that the facility shall assess and document the hepatitis and tuberculosis status of the affected patients.

(b) If the facility requests an exemption under subsection (a)(5) of this section, at minimum, the facility must obtain:

(1) the patient's name, address, date of birth, and payor information, if available; and

(2) the name, address, and telephone number of the patient's usual dialysis facility.

(c) HHSC may only grant a temporary exception in an emergency for a maximum of 120 calendar days, with a single renewal period for an additional 120 calendar days.

#### §507.23. License Renewal During a Public Health Disaster.

(a) This section applies only to an end stage renal disease (ESRD) facility located in a county for which:

(1) the governor declared a state of disaster due to a pandemic or epidemic pursuant to Texas Government Code Chapter 418 (relating to Emergency Management);

(2) the commissioner of the Texas Department of State Health Services determined that a public health disaster exists, pursuant to Texas Health and Safety Code Chapter 81 (relating to Communicable Diseases; Public Health Disasters; Public Health Emergencies); and

(3) the Texas Health and Human Services Commission (HHSC) designated this section as applicable, pursuant to paragraphs (1) and (2) of this subsection.

(b) Notwithstanding §507.13 of this subchapter (relating to License Renewal), an ESRD facility applying for a renewal license may request an exemption for the current fire safety survey requirement by providing evidence to HHSC that the local fire authority is not performing fire inspections.

#### §507.24. Use of Off-Site Facility During a Public Health Disaster.

(a) This section applies only to an end stage renal disease (ESRD) facility located in a county for which:

(1) the governor declared a state of disaster due to a pandemic or epidemic pursuant to Texas Government Code Chapter 418 (relating to Emergency Management);

(2) the commissioner of the Texas Department of State Health Services determined that a public health disaster exists, pursuant to Texas Health and Safety Code Chapter 81 (relating to Communicable Diseases; Public Health Disasters; Public Health Emergencies); and

(3) the Texas Health and Human Services Commission (HHSC) designated this section as applicable, pursuant to paragraphs (1) and (2) of this subsection.

(b) An ESRD facility licensed under Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) that meets the requirements of this section may apply to HHSC to temporarily use an off-site facility under its current license for added services or an increased number of stations to meet patient needs for the public health disaster's duration.

(c) The ESRD facility may only use the off-site facility after HHSC approves the off-site facility and when the off-site facility is:

(1) an ESRD facility no longer licensed under Texas Health and Safety Code Chapter 251 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection that:

(A) can meet the current licensing requirements at §507.33 of this chapter (relating to Water Treatment) and §507.34 of this chapter (relating to Dialysis); or

(B) shall provide integrated hemodialysis machines, which incorporate water treatment and dialysis preparation and delivery into one system;

(2) a mobile, transportable, or relocatable medical unit using integrated dialysis systems, defined as any trailer or self-propelled unit:

(A) equipped with a chassis on wheels;

(B) without a permanent foundation; and

(C) intended for provision of medical services on a temporary basis;

(3) a physician's office built after January 1, 2015, that is currently in use, which a facility may use for home training of dialysis patients;

(4) a physician's office built after January 1, 2015, that has closed within the past 12 months, which a facility may use for home training of dialysis patients and:

(A) is well maintained with all building systems in good working condition; and

(B) has manual fire extinguishers in accordance with the latest National Fire Protection Association (NFPA) code and standard;

(5) an ambulatory surgical center no longer licensed under Texas Health and Safety Code Chapter 243 (relating to Ambulatory Surgical Centers) that closed within the past 36 months, which an ESRD facility may use for either home training or providing in-center dialysis treatment where:

(A) the ESRD facility only provides integrated hemodialysis machines; and

(B) the building layout provides a direct view of all patient stations from a nurse's station;

(6) a freestanding emergency medical care facility no longer licensed under Texas Health and Safety Code Chapter 254 (relating to Freestanding Emergency Medical Care Facilities) that closed within the past 36 months, which an ESRD facility may use for either home training services or providing in-center dialysis treatment where:

(A) the ESRD facility only provides integrated hemodialysis machines; and

(B) the building layout provides a direct view of all patient stations from a nurse's station;

(7) a hospital or portion of a hospital currently licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals); or

(8) a building or structure of opportunity temporarily converted for health care use, including an alternate care site, that is created or maintained by the ESRD facility in partnership with or under the supervision of the health authority, local health department, public health district, or public health consortium that has jurisdiction over the site location.

(d) To request approval for an off-site facility under this section, the ESRD facility must submit in accordance with HHSC instructions:

(1) an application to use an off-site facility for the addition of services or increased number of stations; and

(2) water culture testing results that meet the requirements of §507.33 of this chapter (relating to Water Treatment).

(e) HHSC may approve or deny an ESRD facility application to use an off-site facility under this section. HHSC may require an off-site facility inspection or additional documentation before considering an application.

(f) To protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for an ESRD facility to use the off-site facility under this section at any time. The facility shall safely relocate any patients being treated in the off-site facility at the time HHSC withdraws its approval as soon as practicable according to the ESRD facility's policies and procedures.

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

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



## SUBCHAPTER C. OPERATIONAL REQUIREMENTS FOR EQUIPMENT, WATER TREATMENT AND REUSE, AND SANITARY AND HYGIENIC CONDITIONS



## 26 TAC §§507.30 - 507.38

### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §524.0005, 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 Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The new rules implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

#### §507.30. Technical Standards.

An end stage renal disease (ESRD) facility must comply with all applicable technical standards, including those listed below.

(1) American National Standards Institute (ANSI)/Association for the Advancement of Medical Instrumentation (AAMI)/International Organization for Standardization (ISO) 23500-1:2019, Preparation and quality management of fluids for haemodialysis and related therapies - Part 1: General requirements.

(2) ANSI/AAMI/ISO 23500-2:2019, Preparation and quality management of fluids for haemodialysis and related therapies - Part 2: Water treatment equipment for haemodialysis applications and related therapies.

(3) ANSI/AAMI/ISO 23500-3:2019, Preparation and quality management of fluids for haemodialysis and related therapies - Part 3: Water for haemodialysis and related therapies.

(4) ANSI/AAMI/ISO 23500-4:2019, Preparation and quality management of fluids for haemodialysis and related therapies - Part 4: Concentrates for haemodialysis and related therapies.

(5) ANSI/AAMI/ISO 23500-5:2019, Preparation and quality management of fluids for haemodialysis and related therapies - Part 5: Quality of dialysis fluid for haemodialysis and related therapies.

(6) ANSI/AAMI/ISO 8637-1:2017, Extracorporeal systems for blood purification - Part 1: Haemodialysers, haemodiafilters, haemofilters and haemoconcentrators.

(7) ANSI/AAMI/ISO 8637-2:2018, Extracorporeal systems for blood purification - Part 2: Extracorporeal blood circuit for haemodialysers, haemodiafilters and haemofilters.

(8) ANSI/AAMI/ International Electrotechnical Commission (IEC) 8637-3:2018, Extracorporeal systems for blood purification - Part 3: Plasmafilters.

(9) ANSI/AAMI/IEC 60601-2-16:2018, Medical electrical equipment - Part 2 - 16: Particular requirements for basic safety and essential performance of haemodialysis, haemodiafiltration and haemofiltration equipment.

(10) ANSI/AAMI/IEC 60601-2-39:2018, Medical electrical equipment - Part 2 - 39: Particular requirements for basic safety and essential performance of peritoneal dialysis equipment.

(11) AAMI Technical Information Report (TIR)72:2017, Dialysis fluid chemical composition.

(12) AAMI TIR58:2021/(R)2025, Water testing methodologies.

(13) AAMI TIR43:2021/(R)2025, Ultrapure dialysis fluid for hemodialysis and related therapies.

(14) AAMI TIR77:2018, Sorbent-based regenerative hemodialysis systems.

(15) ANSI/AAMI Renal Disease (RD)47:2020, Reprocessing of hemodialyzers.

(16) Acute Dialysis: Survey Readiness Handbook, 2nd edition, 2021.

#### §507.31. Equipment.

(a) All equipment used by a facility, including backup equipment, shall be approved by the United States Food and Drug Administration (FDA), operated in accordance with the manufacturer's direction for use, and maintained free of defects that could be a potential hazard to patients, staff, or visitors. Qualified staff or contract personnel shall perform maintenance and repair of all equipment.

(1) Staff shall be able to identify malfunctioning equipment and report such equipment to the appropriate staff for immediate repair.

(2) Staff shall clearly and immediately label medical equipment that malfunctions and promptly remove the equipment from service until the facility ensures identification and correction of the malfunction.

(3) A facility shall maintain a record of all maintenance and repairs.

(4) After the facility ensures necessary repair or alteration to any equipment or system, the facility shall thoroughly test the equipment or system for proper operation and disinfect the equipment or system before returning the equipment or system to service.

(5) A facility shall comply with the Federal Food, Drug, and Cosmetic Act, 21 United States Code (USC) §360i(b) (relating to Records and Reports on Devices), concerning reporting when a medical device, as defined in 21 USC §321(h) (relating to Definitions; Generally), has or may have caused or contributed to the injury or death of a patient of the facility.

(6) A facility shall document completion of the requirements listed in paragraphs (1) - (5) of this subsection on the facility's equipment or system repair log (electronic or paper).

(b) A facility shall develop, implement, and enforce a written preventive maintenance program to ensure patient care related equipment used in the facility, or provided by the facility for use by a patient in the patient's home, receives electrical safety inspections, when appropriate, and maintenance at least annually, or more frequently in accordance with the manufacturer's direction for use. Facility staff or contract personnel may provide the preventive maintenance.

(c) If a facility does not have at least one backup dialysis machine, the facility must adopt, implement, and enforce a policy requiring an emergency plan for when a patient cannot complete dialysis due to machine malfunction. The facility must communicate the emergency plan to each patient at admission.

(d) If a facility treats pediatric patients, the facility shall use equipment and supplies, to include blood pressure cuffs, dialyzers, and blood tubing, appropriate for this special population.

(e) All equipment and appliances shall be properly grounded in accordance with the National Fire Protection Association (NFPA 99), Standard for Health Care Facilities, §4.3.2.2.2, 2002 Edition.

(f) A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(1) At a minimum, the emergency equipment and supplies shall include:

- (A) oxygen;
- (B) ventilatory assistance equipment, to include airways, manual breathing bag, and mask;
- (C) suction equipment;
- (D) supplies specified by the medical director; and
- (E) automated external defibrillator.

(2) If a facility treats pediatric patients, the facility shall have the appropriate type and size emergency equipment and supplies listed in paragraph (1) of this subsection for this special population.

(3) A facility shall establish, implement, and enforce a policy for periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.

#### §507.32. General.

(a) A facility shall meet the requirements of this subchapter and Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements). A facility may follow more stringent requirements than the minimum standards required by this subchapter.

(b) The facility medical director and biomedical technical staff shall each demonstrate responsibility for the water treatment and dialysate supply systems to protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminants that may be found in water and improperly prepared dialysate and ensure the dialysate is correctly formulated and meets the requirements of all applicable quality standards.

(c) The facility medical director and biomedical technical staff shall each ensure that policies and procedures related to water treatment, dialysate, and reuse are understandable and accessible to the operators, and the training program includes quality testing, risks, and hazards of improperly prepared concentrate and bacterial issues.

(d) Facility staff shall inform the facility owner, medical director, biomedical technical staff, and any other staff members as required by facility policy before any alteration of, or any device being added to, the water system.

#### §507.33. Water Treatment.

The requirements in this section apply to water used for hemodialysis, including preparation of concentrates from powder at a dialysis facility and dialysate, and reprocessing dialyzers for multiple use.

(1) The design for the water treatment system in a facility shall be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(2) When a facility does not use a public water system supply, the facility shall test the source water monthly in the same manner as a public water system, as required by the Texas Commission on Environmental Quality (TCEQ) under Texas Administrative Code, Title 30, Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(3) The physical space in which the water treatment system is located shall be adequate to allow for maintenance, testing, and repair of equipment. If facility staff mixes concentrates in the same area, the physical space shall also be adequate to house and allow for maintenance, testing, and repair of the mixing equipment and for performing

the mixing procedure. When a facility uses a water distribution system, the system shall be configured as a continuous recirculation loop. To minimize biofilm formation, there shall always be flow in a piping system, except during the backwash cycle of the carbon tanks for direct feed systems.

(A) For indirect feed systems, a minimum of three feet per second water flow shall be achieved in the distribution loop.

(B) For direct feed systems, a minimum flow rate in the distribution shall comply with the standards listed in §507.30 of this subchapter (relating to Technical Standards).

(C) This section shall not apply to facilities providing only home training and support services utilizing single patient devices. Devices used in the facility for training and support services shall be compliant with the United States Food and Drug Administration (FDA) and Underwriters' Laboratories (UL) requirements.

(D) The water treatment and distribution system shall include appropriate pressure gauges, flow meters, sample ports, and other ancillary equipment necessary to allow monitoring of the performance of individual system components and the system as a whole, as determined by the facility medical director.

(4) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described by the standards listed in §507.30 of this subchapter.

(A) Direct feed systems shall include a means of verifiably preventing retrograde flow of water into the distribution loop from the feed side of the reverse osmosis unit.

(B) Dead-end piping (risers with no flow, branches with no fixture) shall not be installed. In any renovation work, dead-end piping shall be removed.

(5) The facility shall develop written policies and procedures for operating the water treatment system, receiving approval from the medical director, and implementing and enforcing the approved policies and procedures. The facility shall develop written parameters for operating each water treatment system component and ensuring the operator is trained and knowledgeable on these parameters. Each major water system component shall be labeled in a manner that identifies the device, describing its function, how performance is verified, and actions to take in the event performance is not within an acceptable range. The facility's policies and procedures for the bypass valves for the carbon tanks, and any other bypass valves considered to be critical by the medical director, shall have a means to minimize the likelihood the device will be inadvertently bypassed during the normal operation of the system.

(6) The materials of any components of water treatment systems (including piping, storage, filters, and distribution systems) that contact the product water shall not interact chemically or physically to adversely affect the product water purity or quality. Such components shall be fabricated from unreactive materials (e.g., plastics) or appropriate stainless steel. The use of materials that are known to cause toxicity in hemodialysis, such as copper, brass, galvanized material, or aluminum, is prohibited at any point beyond the water treatment component used to remove contaminating metal ions (e.g., reverse osmosis system or deionizer).

(7) Chemicals infused into the water such as iodine, acid, flocculants, and complexing agents shall be shown to be nondialyzable or shall be adequately removed from product water. Systems shall be monitored in accordance with the manufacturer's direction for use, and

specific test procedures to verify removal of additives shall be provided and documented. Chemical injection systems shall include a means of regulating the metering pump to control the addition of a chemical. This control system shall be designed to tightly control addition of the chemical. This control system shall ensure the chemical is added only when the water is flowing through the pre-treatment cascade and in fixed proportion to the water flow. If an automated control system is used to inject the chemical, there shall be an independent monitor of the controlling parameter.

(8) Each water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks in series. If the source water is from a private supply that does not use chlorine or chloramine, the water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of one carbon tank.

(A) Reverse osmosis systems, if used, shall meet the standards set forth by the CMS Conditions for Coverage.

(B) Single patient devices used in a dialysis facility shall meet the appropriate standards set forth in the CMS Conditions for Coverage to provide dialysis-quality water. Once the designated patient no longer needs the single patient device, the facility may process, disinfect, and prepare the device for another designated patient's use, per manufacturer's directions for use.

(C) A facility shall meet the following requirements for deionization systems.

(i) Deionization systems, if used, shall be monitored continuously to produce water of one megohm-centimeter or greater specific resistivity (or conductivity of 1.0 microsiemens/centimeter or less) at 25 degrees Celsius. The system shall have an audible and visual alarm which activates in the facility to include the patient care area when the product water resistivity falls below this level, and the product water stream shall be prevented from reaching any point of use.

(ii) A facility shall not dialyze patients on deionized water with a resistivity less than 1.0 megohm-centimeter measured at the output of the final deionizer.

(iii) Deionization tanks, if used, shall be a minimum of two mixed beds in series and shall be used with resistivity monitors including audible and visual alarms placed pre and post the final deionization tank in the system and audible in the patient care area.

(iv) Feed water for deionization systems shall be pretreated with activated carbon adsorption, or a comparable alternative, to prevent nitrosamine formation.

(v) If a deionization system is the last process in a water treatment system, it shall be followed by an ultrafilter or other bacteria and endotoxin reducing device.

(vi) Facilities shall ensure all devices that are regenerated or reconstituted off site, such as deionizers, shall be disinfected at the time of regeneration or reconstitution, so contaminated water is not reintroduced into the system after regeneration or reconstitution.

(D) A facility shall meet the following requirements for carbon tanks.

(i) The carbon tanks shall contain granular activated carbon, with a minimum iodine number of 900 or equivalent, as indicated by the medical device manufacturer. The facility shall not use previously used carbon.

(ii) A minimum of two carbon adsorption beds shall be installed in series with a sample port following the first bed. A sample port shall also be installed following the second bed for use

in the event of free chlorine or chloramine breaking through the first bed.

(iii) The total empty bed contact time (EBCT) shall be at least 10 minutes, with the final tank providing at least five minutes EBCT at the maximum flow rate through the bed. Carbon adsorption systems used to prepare water for home dialysis or for portable dialysis systems are exempt from the requirement for the second carbon and a 10-minute EBCT, if removal of chloramines to below 0.1 milligram/liter (mg/L) is verified before each treatment.

(iv) Water from the sample ports following the first carbon bed shall be tested for chlorine or chloramine, or total chlorine levels at the beginning of each treatment day before patients initiating treatment, before reprocessing of dialyzers, and again before the beginning of each patient shift. If there are no set patient shifts, testing shall be performed every four hours until all activities that require use of dialysis-quality water are completed.

(v) If used, an automated chlorine monitoring system will provide, at minimum, the equivalent frequencies of monitoring as defined above and used in accordance with the manufacturer's direction for use. Facility staff shall manually test the automated chlorine monitoring system before the first patient treatment every morning to verify that the device is functioning within manufacturer's specifications to ensure water quality. If a breakdown in the system occurs at any time before or during the treatment day, the facility shall return to manually testing the system every four hours during the treatment day and maintain the appropriate records for manual monitoring.

(vi) Carbon beds are sometimes arranged as series-connected pairs of beds so that they need not be overly large. The beds within each pair are of equal size and water flows through them are parallel. In this situation, each pair of beds shall have a minimum empty bed contact time of five minutes at the maximum flow rate through the bed. When series connected pairs of beds are used, the piping shall be designed to minimize differences in the resistance to flow from inlet and outlet between each parallel series of beds, to ensure an equal volume of water flows through all beds.

(vii) All samples for chlorine or chloramine, or total chlorine testing shall be drawn when the water treatment system has been operating for at least 15 minutes.

(viii) A facility may use tests for total chlorine, which include both free and combined forms of chlorine, as a single analysis with the maximum allowable concentration of 0.1 mg/L. Test results of greater than 0.5 parts per million (ppm) for chlorine or 0.1 ppm for chloramine from the port between the initial tanks and final tanks shall require testing to be performed at the final exit and replacement of the initial tanks. A facility shall use testing equipment, supplies, and procedures in accordance with the manufacturer's directions for use.

(ix) In a system without a holding tank, if test results at the exit of the final tanks are greater than the parameters for chlorine or chloramine, or total chlorine described in this subparagraph, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine or chloramines, and the medical director shall be notified. In systems with holding tanks, if the holding tank tests less than 0.1 mg/L for total chlorine, the reverse osmosis may be turned off and the product water in the holding tank may be used to finish treatments in process. The medical director shall be notified.

(x) If means other than granulated carbon is used to remove chlorine or chloramine, the facility governing body shall approve such use, in writing, after reviewing the intended method's safety for use in hemodialysis applications. If such methods include the use

of additives, there shall be evidence the product water does not contain unsafe levels of these additives.

(9) Water softeners, if used, shall be tested at the end of the treatment day to verify their capacity to treat a sufficient volume of water to supply the facility for the entire treatment day and shall be fitted with a mechanism to prevent water containing the high concentrations of sodium chloride used during regeneration from entering the product water line during regeneration.

(10) If used, the faces of timers used to control any component of the water treatment or dialysate delivery system shall always be visible to the operator. The facility shall maintain written evidence that staff checked timers for operation and accuracy each day of operation.

(11) Filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(12) Ultrafilters, or other bacterial reducing filters, if used, shall be fitted with pressure gauges on the inlet and outlet water lines to monitor the pressure drop across the membrane. Ultrafilters shall be included in routine disinfection procedures. Ultrafilters with a nominal molecular weight cut off (MWCO) of 20,000 or less are generally adequate for endotoxin removal.

(13) If used, storage tanks shall have a conical or bowl-shaped base and drain from the lowest point of the base. Storage tanks shall have a tight-fitting lid and be vented through a hydrophobic 0.2-micron air filter. A means shall be provided to effectively disinfect any storage tank installed in a water distribution system.

(14) Ultraviolet (UV) lights, if used, shall be monitored at the frequency in accordance with the manufacturer's direction for use and have an endotoxin-reducing filter located downstream of the device. Records shall be maintained for monitoring, as outlined by the manufacturer's directions for use. Monitoring of all water system components shall be maintained on water system logs (electronic or paper).

(15) Water treatment system piping shall be labeled to indicate the pipe contents and direction of flow.

(16) The water treatment system shall be continuously monitored during patient treatment and guarded by audible and visual alarms, which can be seen and heard in the dialysis treatment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located at the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the product water quality, as measured by this device, shall be located after the sensing cell.

(17) When deionization tanks do not follow a reverse osmosis system, the facility shall ensure the parameters for the rejection rate of the membranes assure that the lowest rate accepted would provide product water with a level of chemical contaminants in compliance with the standards listed in §507.30 of this subchapter.

(18) A facility shall maintain water treatment system operation records for each treatment day. The logbook (electronic or paper) shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(19) Microbiological testing of product water shall be conducted.

(A) Routine microbiological testing shall be conducted on a quarterly, or more frequent basis as needed, to ensure the water and dialysate are within the limits in the standards listed in §507.30 of this subchapter. For a newly installed water distribution system, or when any repairs, modifications, or changes to the configuration have

been made to an existing system, weekly testing shall be conducted for four weeks to verify that bacteria and endotoxin levels are consistently within the allowed limits. Changes to components that are designed to be replaced on a routine schedule such as filters, ultrafilters, and ultraviolet lamps do not require a period of more frequent testing.

(B) At a minimum, sample sites chosen for testing shall include the beginning of the distribution piping, product water in the reuse room at any site of concentrate mixing, and end of the distribution piping.

(C) Samples shall be collected before sanitizing or disinfecting the water treatment system and dialysis machines. Water testing results shall be routinely trended and reviewed by the medical director to determine if results seem questionable or if there is an opportunity for improvement. The medical director shall determine if there is a need for retesting. If internal testing is performed with repeated results of "no growth" for three consecutive months, the testing shall be validated via an outside laboratory. A facility shall not use a calibrated loop in microbiological testing of water samples. Colonies shall be counted using a magnifying device.

(D) Product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use shall contain a total viable microbial count of less than 100 colony forming units/millimeter (CFU/ml) and an endotoxin concentration of less than 0.25 endotoxin units (EU)/ml. The action level for the total viable microbial count in the product water shall be consistent with the standards listed in §507.30 of this subchapter.

(E) If the action levels described at subparagraph (D) of this paragraph are observed in the product water, the medical director shall be notified, and corrective measures shall be taken promptly to reduce the levels into an acceptable range.

(F) All bacteria and endotoxin results shall be recorded to identify trends that may indicate the need for corrective action.

(20) If ozone generators are used to disinfect any portion of the water or dialysate delivery system, the ozone generator shall be capable of delivering ozone at the concentration and for the exposure time specified and in accordance with the manufacturer's direction for use. Testing based on the manufacturer's direction shall be used to measure the ozone concentration each time disinfection is performed, to include testing for safe levels of residual ozone at the end of the disinfection cycle. Testing for ozone in the ambient air shall be conducted on a periodic basis as recommended by the manufacturer. The records of all testing shall be maintained in a log (electronic or paper). The frequency of disinfection shall be performed at least monthly.

(21) If used, hot water disinfection systems shall use water that meets the standards listed in §507.30 of this subchapter, which must be capable of delivering hot water at the temperature and for the exposure time specified and in accordance with the manufacturer's direction for use, and be monitored for temperature and time of exposure to hot water, as specified by the manufacturer. Water temperature shall be monitored at a point furthest from the water heater, where the lowest water temperature is likely to occur. The water temperature shall be measured each time a disinfection cycle is performed. A record that verifies successful completion of the heat disinfection shall be maintained. The frequency of disinfection shall be performed at least monthly.

(22) After chemical disinfection, a mechanism shall be incorporated to ensure that the equipment and system are restored to a safe condition before using the equipment and product water being used for dialysis applications. The results of all absence testing shall be documented. The frequency of disinfection shall be performed at least

monthly. A mechanism shall be incorporated in the distribution system to ensure disinfectant does not drain from pipes during the disinfection period.

(23) Users shall establish and implement a procedure for regular disinfection of the line between the outlet from the water distribution system and the back of the dialysis machine.

(24) Samples of product water used for dialysis shall be submitted for chemical analysis every six months, after a change of the reverse osmosis membranes, and demonstrate that the quality and level of chemical contaminants of the product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use meets the standards listed in §507.30 of this subchapter.

(A) Samples for chemical analysis shall be collected at the most distal point in each water distribution loop. All other outlets from the distribution loops shall be inspected to ensure that the outlets are fabricated from compatible materials. Appropriate containers and pH adjustments shall be used to ensure accurate determinations. New facilities, or facilities that add or change the water distribution system configuration, shall draw samples at the most distal point for each water distribution loop and then every six months thereafter.

(B) Additional chemical analysis shall be submitted when any modification or change to the existing system configuration is made to the water treatment system, or if the percent rejection of a reverse osmosis system decreased 5.0 percent or more from the percent rejection measured at the time the water sample for the preceding chemical analysis was taken.

(25) Facility records shall include all test results and provide evidence the medical director has reviewed the water quality testing results and directed corrective action when indicated.

(26) Only individuals qualified by the education or experience described in §507.54 of this chapter (relating to Staff Qualifications) may operate, repair, or replace water treatment system components.

#### §507.34. Dialysate.

(a) The facility shall develop, implement, maintain, and evaluate quality assessment and performance improvement (QAPI) procedures to ensure ongoing conformance to policies and procedures regarding dialysate quality.

(b) Each facility shall set all hemodialysis machines to use only one family of concentrates. When new machines are put into service, the concentrate family changes, or the concentrate manufacturer changes, dialysate samples shall be taken from each machine and sent to a laboratory for verification of the dialysate electrolyte values.

(c) Before each patient treatment, facility staff shall verify the dialysate conductivity and pH of each machine with an independent method, following the manufacturer's guidance.

(d) If the facility is using a machine with internal independent testing for conductivity and pH, the facility shall test the machine's calibration every six months and maintain logs of the calibration testing.

(e) Bacteriological testing shall be conducted, and bacteriological levels shall meet the hemodialysis water quality required by the standards listed in §507.30 of this subchapter (relating to Technical Standards).

(f) Only a qualified, licensed nurse may use an additive to increase concentrations of specific electrolytes in the acid concentrate. The nurse shall follow mixing procedures, as specified by the additive manufacturer. For additives prescribed for a specific patient, the nurse shall label the container holding the prescribed acid concentrate

with the patient name, final concentration of the added electrolyte, date the prescribed concentrate was made, and the facility staff name who mixed the additive. Facility staff may use additives only:

- (1) when other interventions were not effective;
- (2) per physician order; and
- (3) when the additive is reviewed by the governing body.

(g) A facility shall ensure all components used in concentrate preparation systems (including mixing and storage tanks, pumps, valves, and piping) are only made from materials (e.g., plastics or appropriate stainless steel) that do not interact chemically or physically with the concentrate to affect its purity, or with the germicides used to disinfect the equipment. The facility shall ensure components are not made of or use materials known to cause toxicity in hemodialysis such as copper, brass, galvanized material, and aluminum.

(h) Facility policies shall address means to protect stored dialysate components (acid concentrates, bicarbonate concentrates, or bulk storage of dialysate components) from tampering or degeneration due to exposure to extreme heat or cold.

(i) The facility shall develop, implement, and enforce procedures to:

(1) control the transfer of acid concentrates from the delivery container to the clearly labeled storage tank and prevent the inadvertent mixing of different concentrate formulations;

(2) form an integral system of the tank and associated plumbing to prevent contamination of the acid concentrate; and

(3) secure and clearly label the storage tank and inlet and outlet connections, if remote from the tank.

(j) Concentrate mixing systems shall include a purified water source, a suitable drain, and an acceptable electrical outlet, as specified by the manufacturer's recommendations, directions, or instructions.

(1) Mixing system operators shall use personal protective equipment as specified and in accordance with the manufacturer's direction for use during all mixing processes.

(2) Operators shall follow the manufacturer's directions for use of a concentrate mixing system, including instructions for mixing the powder with the correct amount of water, and determine and record the number of bags or weight of powder added.

(3) The facility shall use clear mixing tank labeling to indicate the fill and final volumes required to correctly dilute the powder.

(4) The facility shall monitor systems for preparing either bicarbonate or acid concentrate from powder according to the manufacturer's directions for use to ensure compliance with subsection (k)(1) of this section.

(5) Facility staff shall not use or transfer concentrates to holding tanks or distribution systems until staff complete all tests per the manufacturer's specifications and in accordance with the manufacturer's directions for use. Facility staff shall document the test results and include the facility staff signature who completed the tests.

(6) Where a facility designs its own system for mixing concentrates, the facility shall develop and validate procedures using an independent laboratory to ensure proper concentrate mixing, including establishing acceptable limits for proper concentration tests.

(k) The facility shall ensure the design of acid concentrate mixing tanks allow the inside of the tank to be rinsed when changing concentrate formulas.

(1) The facility shall ensure that the design and maintenance of acid mixing systems prevent rust and corrosion.

(2) Facility staff shall empty acid concentrate mixing tanks completely and rinse with dialysis-quality water before mixing another batch of concentrate to prevent cross-contamination between different batches.

(3) Facility staff shall disinfect acid concentrate mixing equipment, as specified by the equipment manufacturer or, in the case where no specifications are given, as defined by facility policy.

(4) The facility shall maintain records of disinfecting and rinsing disinfectants to safe residual levels.

(l) Bicarbonate concentrate mixing tanks shall have conical or bowl-shaped bottoms and shall drain from the lowest point of the base. The tank design shall allow disinfection and rinsing of all internal surfaces.

(1) Facility staff shall not pre-fill bicarbonate concentrate mixing tanks the night before use, and mixed solution shall not remain in mixing or holding tanks overnight.

(2) If disinfectant remains in the mixing tank overnight, facility staff shall completely drain this solution, rinse the tank and test for residual disinfectant before preparing the first batch of that day of bicarbonate concentrate.

(3) Facility staff shall empty the container and rinse with dialysis-quality water before mixing a new batch of bicarbonate solution, and staff shall not mix unused portions of bicarbonate concentrate with fresh concentrate.

(4) At a minimum, facility staff shall disinfect bicarbonate distribution systems weekly. Facility staff shall disinfect the bicarbonate distribution systems more frequently if required by the manufacturer's directions for use, or if dialysate culture results are above the action level.

(5) If facility staff reuse jugs to deliver bicarbonate concentrate to individual hemodialysis machines, staff shall:

(A) empty jugs of concentrate, rinse jugs with dialysis-quality water, and invert jugs to drain at the end of each treatment day;

(B) rinse pick-up tubes with dialysis-quality water and allow tubes to air dry at the end of each treatment day;

(C) at a minimum, disinfect jugs and pick-up tubes weekly, and the facility QAPI committee shall consider more frequent jug and pick-up tube disinfection if dialysate culture results are above the action level; and

(D) following disinfection:

(i) drain jugs, rinse jugs using dialysis-quality water to ensure jugs are free of residual disinfectant, and invert jugs to dry;

(ii) rinse pick-up tubes using dialysis-quality water to ensure tubes are free of residual disinfectant, and allow the tubes to air dry; and

(iii) test jugs and pick-up tubes for residual disinfectant and document the test results.

(m) The facility shall label all mixing tanks, bulk storage tanks, dispensing tanks, and containers for single hemodialysis treatments to indicate the contents of the tank or container.

(1) Before batch preparation, facility staff shall affix a label to the mixing tank that includes the date of preparation, tank contents, and chemical composition or formulation of the concentrate being pre-

pared. This labeling shall remain on the mixing tank until the tank has been emptied.

(2) A facility shall permanently label bulk storage and dispensing tanks to identify the chemical composition or formulation of their contents.

(3) A facility shall, at a minimum, sufficiently label single-machine containers to differentiate the contents from other concentrate formulations used in the facility and permit positive identification by users of container contents.

(n) A facility shall maintain permanent records of batches produced to include the concentrate formula produced, volume of the batch, lot numbers of powdered concentrate packages, manufacturer of the powdered concentrate, date and time of mixing, test results, person performing mixing, and expiration date, if applicable.

(o) If facility staff prepare acid and bicarbonate concentrates in the facility, the facility shall ensure completion of preventive maintenance in accordance with the manufacturer's direction for use. The facility shall maintain records indicating the date, time, facility staff performing the procedure, and results, if applicable.

#### §507.35. Reuse of Hemodialyzers and Related Devices.

(a) Reuse practice in a facility shall comply with the standards listed in §507.30 of this subchapter (relating to Technical Standards) and the CMS Conditions for Coverage.

(b) Facility staff shall review the dialyzer manufacturer's labeling to determine whether a specific dialyzer requires special considerations.

(c) Facility staff shall replace a transducer protector when wetted during a dialysis treatment and use a transducer protector for only one treatment. A facility shall quarterly inspect equipment with internal transducer protectors to ensure the equipment is not contaminated.

(d) Facility staff shall reuse arterial lines only when the arterial lines are labeled for reuse by the manufacturer, and the manufacturer-established protocols for the specific line are approved by the United States Food and Drug Administration.

(e) The water supply in the reuse room shall incorporate a check valve to prevent chemical agents used from inadvertently back flowing into the water distribution system.

(f) Ventilation systems in the reuse room shall meet the requirements of Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements) and be connected to an exhaust system to the outside that is separate from the building exhaust system, have an exhaust fan located at the discharge end of the system, and have an exhaust duct system of noncombustible corrosion-resistant material, as needed to meet the planned usage of the system. Exhaust outlets shall be above the roof-level and arranged to minimize recirculation of exhaust air into the building.

(g) A facility shall establish, implement, and enforce a policy for dialyzer reuse criteria (including any facility-set number of reuses allowed) that is included in patient education materials and posted in the waiting room and patient treatment areas. A dialyzer may be reused only if the dialyzer's original volume is measured and recorded before its first use, and the volume of that dialyzer is used as the basis for discard for that dialyzer.

(h) A facility shall consider and address the health and safety of patients sensitive to disinfectant solution residuals.

(i) A facility shall provide each patient with information regarding the reuse practices at the facility and the opportunity to have questions answered.

(j) A facility shall restrict the reprocessing room to authorized personnel during the reprocessing of dialyzers.

(k) A facility shall obtain written informed consent for dialysis services from the patient or the patient's legally authorized representative.

(l) If a facility participates in centralized reprocessing at a different location, in which dialyzers from multiple facilities are reprocessed at one site, the facility shall:

(1) ensure direct communication with the medical director at the centralized reprocessing center and the facility medical director;

(2) require the use of an automated reprocessing facility;

(3) maintain responsibility and accountability for the entire reuse process;

(4) adopt, implement, and enforce policies to ensure the transfer and transport of used and reprocessed dialyzers to and from the off-site location does not increase contamination of the dialyzers or the environment;

(5) ensure that each dialyzer is returned to the appropriate facility or patient home, and a system shall be established to verify that the correct dialyzers are being returned to each patient's home in the case of home patients who participate in a dialyzer reprocessing program; and

(6) provide Texas Health and Human Services Commission staff access to the off-site reprocessing site as part of a facility inspection.

#### §507.36. Infection Control.

(a) A facility shall follow Standard Precautions for all patient care activities in accordance with Code of Federal Regulations, Title 29 §1910.1030(d)(1) - (3) (relating to Bloodborne Pathogens) and Texas Health and Safety Code Chapter 85, Subchapter I (relating to Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

(1) The facility shall demonstrate that it follows standard infection control precautions by implementing the most current Recommended Infection Control Practices for Hemodialysis Units developed by the Centers for Disease Control and Prevention, to prevent and control cross-contamination and the spread of infectious agents.

(2) The facility and facility staff shall take infection control precautions for all patients.

(A) Facility staff shall wear disposable gloves when caring for a patient or touching the patient's equipment or bloodlines at the dialysis station.

(B) Facility staff shall remove gloves and clean hands between each patient contact, and after touching blood, body fluids, secretions, excretions, and contaminated items or station. Enough sinks, with hands-free operable controls, warm water, and soap shall be available to facilitate handwashing. Provisions for hand drying shall be included at each handwashing sink.

(C) If hands are not visibly soiled, staff may substitute use of a waterless antiseptic hand rub for handwashing. Staff members may use a waterless antiseptic hand rub up for up to three consecutive uses, after which washing with soap and water is required.

(D) Facility staff shall wear gowns, eye protection, and, where applicable, masks to protect themselves and prevent soiling clothing when performing procedures during which spurting or spattering of blood might occur (e.g., during initiation and termination

of dialysis, cleaning dialyzers, and centrifuging blood). If visibly soiled, gowns shall be changed and discarded immediately.

(E) Facility staff shall not eat, drink, or smoke in the dialysis treatment area or laboratory.

(F) For an item taken to the dialysis station, facility staff shall:

(i) dispose of the item;

(ii) dedicate the item for use only on a single patient;

or

(iii) clean and disinfect the item before taking the item to a common clean area or using the item on another patient.

(G) Facility staff shall dedicate non-disposable items that cannot be cleaned and disinfected (e.g., adhesive tape, cloth covered blood pressure cuffs) for use on only a single patient.

(H) Facility staff shall use unused medications or supplies (syringes, alcohol swabs, etc.) taken to the patient's station for only that patient and not return the medications or supplies to a common clean area or use the medications or supplies on other patients.

(I) A facility shall clearly designate clean areas for preparing, handling, and storing medications and unused supplies and equipment. Facility staff shall not handle or store medications or clean supplies in the same or an immediately adjacent area where facility staff handle used supplies, equipment, or blood samples.

(J) A facility shall clearly designate contaminated areas where staff handle used supplies, equipment, or blood samples.

(K) When facility staff use multiple dose medication vials (including vials containing diluents), staff shall prepare individual patient doses in a clean, centralized area away from dialysis stations and deliver the medication separately to each patient.

(L) Facility staff shall not carry multiple dose medication vials from station to station.

(M) Facility staff shall not use common medication carts to deliver medications to patients. If facility staff use trays to deliver medications to individual patients, staff shall clean and disinfect the trays after delivering medications to each patient.

(N) If facility staff use a common supply cart to store clean supplies in the patient treatment area, this cart shall remain in a designated area at a sufficient distance from patient stations to avoid contamination with blood. Staff shall not move such carts between stations to distribute supplies.

(O) Facility staff shall not carry medication vials, syringes, alcohol swabs, or supplies in their pockets.

(3) The facility shall ensure the location and arrangement of handwashing sinks permit ease of access and proper use.

(4) Facility staff shall explain the potential risks associated with blood and blood products to patients and family members and provide the indicated personal protective equipment to a patient or family member, if the patient or family member assists in procedures that could result in contact with blood or body fluids. Facility staff shall encourage patients to clean their access sites before each treatment and their hands following their treatment.

(b) A facility shall designate a staff member to monitor and coordinate infection control activities.

(c) A facility shall develop, maintain, and enforce a system to identify and track infections to allow identification of trends or patterns. This activity shall be reviewed as a part of the facility's quality assessment and performance improvement (QAPI) program described in §507.43 of this chapter (relating to Quality Assessment and Performance Improvement). The record shall include trends, corrective actions, and improvement actions taken.

§507.37. Environmental.

(a) A facility shall comply with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(b) Facility staff shall clean blood spills immediately, as required by the Occupational Safety and Health Administration (OSHA) Bloodborne Pathogens Standards.

(1) The facility must follow all appropriate requirements in the OSHA Bloodborne Pathogens Standards.

(2) Facility staff shall ensure the surface is subjected to intermediate-level disinfection in accordance with the manufacturer's directions for use if a facility uses commercial liquid chemical disinfectant.

(3) If using a solution of chlorine bleach (sodium hypochlorite), facility staff shall ensure the solution is at least 1:100 sodium hypochlorite and water. Facility staff shall mix the solution in accordance with the manufacturer's directions for use. Facility staff shall ensure the surface being treated is compatible with this type of chemical treatment. Facility staff shall label the solution with the date and time the staff mixed the solution. Facility staff shall only use the solution for 24 hours after being mixed.

(c) The facility shall adhere to the following procedures for equipment and dialysis machines.

(1) The facility shall routinely disinfect active and backup dialysis machines according to facility defined protocol, accomplishing at least intermediate-level disinfection, per Centers for Disease Control and Prevention (CDC) guidelines. The facility staff responsible for disinfecting the dialysis machines shall document the date and the time they disinfected the dialysis machines, verified facility staff rinsed the dialysis machines, and verified facility staff removed the disinfectant.

(2) Between patient shifts, facility staff shall clean machine exteriors, treatment chairs, tourniquets, blood pressure cuffs, facility individual television sets at each treatment station, and hemostats. Facility staff shall remove blood pressure cuffs that become contaminated with blood from service, disinfect the cuffs, and allow the cuffs to dry before using the cuffs, per CDC recommendations.

(d) The facility shall comply with the requirements set forth by the Texas Health and Human Services Commission in Texas Administrative Code, Title 25 (25 TAC) Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities); the Texas Commission on Environmental Quality (TCEQ) requirements in 30 TAC Chapter 326 (relating to Medical Waste Management); and Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(e) The facility shall dispose all sewage and liquid wastes in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(f) Waste containers shall comply with Subchapter Z of this chapter.

§507.38. Disease Prevention.

(a) The facility shall take the following measures for Hepatitis B prevention.

(1) The facility shall offer Hepatitis B vaccination to all previously unvaccinated, susceptible new staff members in accordance with Code of Federal Regulations, Title 29 §1910.1030(f)(1) - (2) (relating to Bloodborne Pathogens). Staff vaccination records shall be maintained in each staff member's health record.

(2) With an order from the patient's nephrologist, facility staff shall make the Hepatitis B vaccine available to a patient who is susceptible to Hepatitis B, provided that the patient has coverage or is willing to pay for the vaccination.

(3) The facility shall ensure the most recent Centers for Disease Control and Prevention (CDC) Hepatitis B Vaccine Information Statement is available to patients.

(4) The facility shall ensure serologic screening of patients.

(A) The facility must record the Hepatitis B virus (HBV) serological status to include Hepatitis B surface antigen (HbsAg), total anti-Hepatitis B core antibody (anti-HBc), and antibody to Hepatitis B surface antigen (anti-HBs) of all patients before admission to the hemodialysis unit. The facility must maintain the anti-HBc results obtained previously or on admission in the clinical record and repeated only if clinically indicated.

(B) A patient returning to a facility after extended hospitalization or absence of 30 calendar days or longer shall have been screened for HbsAg within one month before or at the time of admission to the facility or have a known anti-HBs status of at least 10 milli-international units per milliliter no more than 12 months before admission. The facility shall document how this screening requirement is met.

(C) Repeated serologic screening shall be based on the patient's antigen or antibody status.

(i) Monthly screening for HbsAg is required for patients whose previous test results are negative for anti-HBs.

(ii) Screening of HbsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis but shall be performed at least annually.

(5) The facility shall follow appropriate isolation procedures for an HBsAg-positive patient.

(A) An end stage renal disease (ESRD) facility licensed before February 9, 2009, shall comply with §507.16(c)(8) of this chapter (relating to Change in Status). An ESRD facility licensed after February 9, 2009, shall treat patients positive for HBsAg in a separate treatment room that complies with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(B) Separate dedicated supplies and equipment, including blood glucose monitors, shall be used to provide care to the Hepatitis B positive patients. All supplies used in the isolation area or room, such as clamps, blood pressure cuffs, testing reagents, etc., shall be labeled "isolation" and not routinely removed from the isolation area or room.

(C) Refillable concentrate containers shall be surface disinfected at the completion of each treatment. Refillable acid concentrate containers shall be kept in the isolation area or room and refilled at the door. Refillable bicarbonate concentrate containers shall be removed for cleaning and disinfection. In the disinfection area, containers labeled "isolation" containers and pick-up tubes shall be segregated in a dedicated, designated area away from all other containers and pick-up tubes.



(D) Separate gowns shall be used in the isolation area or room and removed before leaving the isolation area or room. Anyone entering the isolation area or room during the patient's treatment shall wear a protective gown. Gowns used in the isolation area or room shall be discarded at the end of each treatment day. If visibly soiled, gowns shall be changed and discarded immediately.

(E) Dedicated cleaning supplies (such as a mop and bucket) for cleaning the isolation area or room and blood spills shall be used and labeled "isolation."

(F) A patient who tests positive for HBsAg shall be dialyzed on equipment reserved and maintained for an HBsAg-positive patient's use only.

(G) When a direct patient care staff member is assigned to both HBsAg-negative and HBsAg-positive patients, the HBsAg-negative patients assigned to this grouping shall be Hepatitis B antibody positive. Hepatitis B antibody positive patients are to be seated at the treatment stations nearest the isolation station and assigned to the same staff member who is caring for the HBsAg-positive patient.

(H) If an HBsAg-positive patient is discharged, the equipment that had been reserved for that patient shall be given intermediate-level disinfection before use for a patient testing negative for HBsAg.

(I) In the case of patients new to dialysis or a patient returning to a facility after extended hospitalization or absence of 30 calendar days or longer, if these patients are admitted for treatment before results of HBsAg or anti-HBs testing are known, these patients shall undergo treatment as if the HBsAg test results were potentially positive, except that they shall not be treated in the HBsAg isolation room, area, or machine.

(i) The facility shall treat potentially HBsAg-positive patients in a location in the treatment area that is outside of traffic patterns and shall not reuse the dialyzer until the HBsAg test results are known.

(ii) The dialysis machine used by the HBsAg-positive patient shall be given intermediate-level disinfection before its use by another patient.

(iii) The facility shall obtain the patient's HBsAg status results within three calendar days of admission.

(b) The facility shall take the following measures for tuberculosis prevention.

(1) The facility direct care staff shall be screened for tuberculosis upon employment before patient contact, or provide documentation of negative tuberculosis status, per current CDC recommendations.

(2) Subsequent screening of facility staff shall be performed after any potential exposure to laryngeal or pulmonary tuberculosis, per current CDC recommendations.

(3) Facility staff shall follow the facility's respiratory isolation procedures and precautions when providing treatment to patients with pulmonary tuberculosis.

(4) The facility shall screen patients for tuberculosis when indicated by the presence of risk factors for, or the signs and symptoms of tuberculosis. Screening shall be performed after potential exposure to active laryngeal or pulmonary tuberculosis, per current CDC recommendation.

(c) The facility shall adopt, implement, and enforce a policy for offering and providing pneumococcal and influenza vaccines. The policy shall:

(1) include provisions that the influenza vaccine shall be offered according to the CDC annual recommendations, and the pneumococcal vaccine shall be offered throughout the year;

(2) require the facility staff administering the vaccine to ask the patient if they are currently vaccinated against influenza or pneumococcal disease, assess potential contraindications, and then, if appropriate, administer the vaccine under approved facility protocols;

(3) address required vaccination documentation in the patient clinical record; and

(4) include that the Texas Health and Human Services Commission may waive vaccine administration requirements based on established vaccine shortages.

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

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



## **SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT**

**26 TAC §§507.41 - 507.49, 507.51 - 507.60**

### **STATUTORY AUTHORITY**

The new rules are authorized by Texas Government Code §524.0005, 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 Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The new rules implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

### **§507.41. Governing Body.**

(a) The facility shall have an identified governing body responsible for the facility's organization, management, control, and operation, including appointing the facility's medical director as defined in §507.2 of this chapter (relating to Definitions).

(b) A facility may request in writing a waiver to appoint or retain as medical director a physician who does not meet one or more of the qualifications in §507.2(50)(B) of this chapter. The request shall explain why a physician meeting the board certification requirement is not available and include the physician's resume for the physician the

facility seeks to appoint or retain. The facility shall make the request through the Texas Health and Human Services Commission (HHSC) Health Facility Licensing Unit, for transmission to the CMS. The facility may not appoint or retain as medical director a physician who does not meet one or more of the qualifications in §507.2(49)(B) of this chapter until the facility receives approval from CMS.

(c) The governing body shall develop, implement, and enforce policies and procedures for all services provided by the facility.

(d) The governing body shall adopt, implement, and enforce policies and procedures to ensure compliance with current laws, rules, and regulations pertaining to medical staff.

(e) The governing body shall implement and annually review current and effective administrative rules, regulations, and policies designed to protect patient health and safety.

(f) The governing body shall ensure there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care. The governing body shall review and monitor QAPI activities at least biannually.

(g) The governing body shall ensure all facility staff, including advanced practice registered nurses, physician assistants, registered nurses, licensed vocational nurses, licensed master social workers, registered dietitians, patient care technicians, and other technical staff, are qualified to serve the complex needs of dialysis patients and deliver dialysis services. Registered nurses, licensed vocational nurses, patient care technicians, and other technical staff shall demonstrate and sustain the skills and any professional licensures required to perform the specific duties of their positions.

(h) The governing body shall ensure adequate numbers of qualified personnel are present whenever patients are undergoing dialysis so that the patient to staff ratio is appropriate to the level of dialysis care given and meets the needs of patients, including meeting the minimum staffing requirements demonstrated in §507.60 of this chapter (relating to Staffing Table).

(i) The governing body shall review, approve, and implement the facility's training program for staff, patients, and caregivers.

(j) The governing body shall develop, implement, and enforce policies and procedures relating to the facility's emergency preparedness plan to meet the requirements of §507.46 of this subchapter (relating to Emergency Preparedness). The plan shall address the continuity of essential building systems including emergency power and water, or a contract with another licensed end stage renal disease (ESRD) facility to provide emergency contingency care to patients to meet the requirements of Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(k) The governing body shall ensure all equipment used by facility staff or patients is properly maintained in accordance with the manufacturer's directions.

(l) The governing body shall ensure the facility's physical environment protects the health and safety of patients, personnel, and the public. The licensed facility site and the facility's surrounding physical structure used by the patients (including stairwells, corridors, and passageways) shall meet the local building and fire safety codes and standards as they relate to design and space requirements for safe access and patient privacy.

(m) The governing body shall develop, implement, and enforce policies and procedures regarding disruptive patients or family members to ensure the health and safety of patients, personnel, and the public.

(n) The governing body shall ensure that all facility staff members have access to the most current version of all applicable laws, rules, and regulations.

#### §507.42. Patient Rights.

(a) Each facility shall adopt, implement, and enforce policies and procedures appropriate to the patient population served to ensure each patient is:

(1) treated with respect, dignity, and full recognition of the patient's individuality and personal needs;

(2) provided privacy and confidentiality for the patient and the patient's clinical record;

(3) provided a safe, sanitary, and comfortable treatment environment;

(4) provided information in a manner to facilitate understanding by the patient and the patient's legal representative, family member, or significant other, as applicable, including patient information materials available in the appropriate language;

(5) provided an interpreter, interpreter service, or visual and hearing assistance if written materials in the patient's primary language are not available or not appropriate for the patient's needs;

(6) informed by a physician of the patient's medical status;

(7) informed of and provided education regarding all treatment modalities and settings, including self-care and transplant, for the treatment of end stage renal disease upon initiating treatment and an annual basis thereafter;

(8) informed about and provided the opportunity to participate in all aspects of care, including plan of care meetings, the right to refuse treatment, and the medical consequences of such refusal;

(9) informed of all services available in the facility and all charges for services provided;

(10) informed about the facility's reuse of dialysis supplies, including hemodialyzers, and if printed materials such as brochures are used to describe a facility and its services the brochures shall contain a statement describing the methods and procedures used when such supplies are reused;

(11) assured of a reasonable response by the facility to the patient's requests and needs for treatment or service, within the facility's capacity, the facility's stated mission, and applicable law and regulation;

(12) provided hours of dialysis that are scheduled for patient convenience whenever feasible or possible, with consideration is given to the patient's work or school schedule;

(13) transferred or discharged only for medical reasons, for the patient's welfare or that of other patients or staff members, or for nonpayment of fees; and given 30 calendar days advance notice in the event of a transfer or discharge, except in cases where the patient presents an immediate risk to others;

(14) given an opportunity and assistance to improve problematic behavior before dismissal from the facility;

(15) protected from abuse, neglect, or exploitation;

(16) provided information regarding advance directives and allowed to formulate such directives to the extent permitted by law, including documents executed under Texas Health and Safety Code Chapter 166 (relating to Advance Directives);

(17) fully informed on how to file a complaint against the facility without fear of reprisal or denial of services, including a written statement provided at the time of admission informing patients of their rights to make a complaint directly to Texas Health and Human Services Commission (HHSC) Complaint and Incident Intake;

(18) fully informed of the rights listed in this section, the responsibilities established by the facility, and all rules and regulations governing patient conduct and responsibilities, including a written copy of the patient's rights and responsibilities provided upon admission to each patient or the patient's legally authorized representative; and

(19) fully informed of the patient plan of care process, including the necessary services outlined in the patient plan of care.

(b) The facility shall prominently and conspicuously post a legible and current copy of the patient rights and facility license certificate in one or more public areas of the facility, so that the posting is readily available and observable to all facility patients, staff, and visitors.

§507.43. Quality Assessment and Performance Improvement.

(a) A facility shall develop, implement, maintain, and evaluate an effective, ongoing, facility-wide, data-driven, interdisciplinary quality assessment and performance improvement (QAPI) program. The program shall be individualized to the facility and meet the criteria and standards described in this section.

(b) The program shall reflect the complexity of the facility's organization and services involved. All facility services (including services furnished under contract or arrangement), shall focus on indicators related to improved health outcomes and prevention and reduction of medical errors.

(c) The program shall include an ongoing program that achieves measurable improvement in health outcomes and reduction of medical errors by using indicators or performance measures associated with improved health outcomes and with identification and reduction of medical errors.

(d) The facility shall demonstrate that facility staff evaluate the provision of dialysis care and patient services, set treatment goals, identify opportunities for improvement, develop and implement improvement plans, and evaluate the implementation until resolution is achieved.

(e) The facility shall measure, analyze, and track quality indicators or other aspects of performance it adopts or develops that reflect processes of care and facility operations. The facility shall provide evidence to show that it continuously reviews aggregate patient data, including identifying and tracking patient infections for trends.

(f) Core staff members shall actively participate in the QAPI activities, including QAPI meetings.

(1) A facility shall hold QAPI meetings monthly, or more often as necessary, to identify or correct problems.

(2) A facility shall conduct QAPI meetings separately from a patient plan of care conference.

(3) A facility shall document QAPI meetings.

(4) A facility shall invite and encourage the facility patient representatives to attend QAPI meetings.

(g) The facility's QAPI program shall include:

(1) an ongoing review of key elements of care using comparative and trend data to include aggregate patient data;

(2) identifying areas where performance measures or outcomes indicate an opportunity for improvement, including review of the progress of End Stage Renal Disease (ESRD) Network Program and CMS assigned activities;

(3) appointing interdisciplinary improvement teams to:

(A) identify, measure, analyze, and track indicators for variation from desired outcomes;

(B) create and implement improvement plans;

(C) evaluate improvement plan implementation; and

(D) continue monitoring and improvement activities until the improvement plan resolution; and

(4) establishing and monitoring quality indicators related to improved health outcomes.

(h) For each quality assessment indicator, the facility shall establish and monitor a level of performance consistent with current professional knowledge. These performance components shall influence or relate to the desired outcomes themselves. At a minimum, the facility shall measure, analyze, and track monthly:

(1) water quality (chemical, bacteriological analysis, and other indicators specific to the facility's water treatment system);

(2) equipment preventive maintenance and repair;

(3) reprocessing of hemodialyzers (dialyzer performance measures, labeling, and disinfection);

(4) infection control (staff and patient screening; standard precautions; bacteriological monitoring of dialyzers, water, machines, and dialysate; pyrogen reactions; sepsis episodes; patient infections; and peritonitis rate);

(5) adverse events;

(6) vascular access;

(7) reportable incidents as required to be reported under §507.56 of this subchapter (relating to Incident Reports);

(8) mortality (review of each death and monitoring modality specific mortality rates);

(A) complaints and suggestions (from patients, family, or staff);

(B) staffing to include orientation, training, delegation, licensing and certification, and non-adherence to policies and procedures by facility staff;

(C) safety (fire and emergency preparedness, use of a Texas Health and Human Services Commission (HHSC) approved reporting system, and disposal of special waste);

(D) clinical records review to include dialysis treatment errors, and medication errors;

(E) clinical outcomes (laboratory indicators, hospitalizations, vascular access complications, intradialytic complications, fluid management, patient no-shows, patient non-adherence to the dialysis prescription, and transplantation);

(F) patient's health-related quality of life surveys; and

(G) involuntary transfer or discharge of a patient.

(9) The dialysis facility shall continuously monitor performance, take actions that result in performance improvement, and track performance to ensure that improvements are sustained over time. The

facility shall immediately correct any identified problems that threaten health and safety of patients.

(i) HHSC may review a facility's QAPI activities to determine compliance with this section.

(1) An HHSC inspector shall verify the facility has a QAPI program that addresses concerns relating to quality of care provided to its patients and the core staff members have knowledge of and the ability to access the facility's QAPI program.

(2) HHSC requires disclosure of QAPI program records when disclosure is necessary to determine compliance with this section.

#### §507.44. Indicators of Quality of Care.

(a) The facility shall regularly review the facility's data to identify opportunities to improve care. Assistance in improving care from the Texas Health and Human Services Commission (HHSC) or HHSC designee may include feedback of comparative data, a plan of correction, or an on-site inspection.

(b) The facility shall adopt, implement, and enforce procedures for resolution of complaints relevant to quality of care or services rendered by licensed health care professionals and other facility staff members, including contract services or staff.

(c) The facility shall document complaint receipt and the disposition. The investigation and documentation shall be completed within 30 calendar days after the facility receives the complaint unless the facility has and documents reasonable cause for a delay.

#### §507.45. Patient Assessment and Plan of Care.

(a) A facility shall develop, implement, and enforce policies and procedures regarding the patient's plan of care process, which specifies the services necessary to address the patient's comorbid conditions and other needs based on the patient's interdisciplinary assessment. The facility shall coordinate patient services using an interdisciplinary team approach, per CMS guidance. The interdisciplinary team shall consist of the patient, the patient's primary dialysis physician, registered nurse, social worker, and dietitian.

(b) The interdisciplinary team shall engage in an interactive conference to develop a written, individualized, comprehensive patient plan of care that specifies the services necessary to address the patient's medical, psychological, social, and functional needs, and includes treatment goals.

(c) The patient plan of care shall include measurable and expected outcomes and estimated timetables to achieve these outcomes. The patient plan of care shall include the patient's current dose of dialysis, dialysis adequacy, other medical comorbidity issues, nutritional status, mineral metabolism, anemia, vascular access, psychosocial status, modality, transplantation status, rehabilitation status, goals, and education and training.

(d) The patient plan of care shall include evidence of coordination with other service providers (e.g., hospitals, long term care facilities, home and community support services agencies, and transportation providers) as needed to ensure continuity of safe care.

(e) The patient plan of care shall include evidence of the patient's (or patient's legal representative's) input and participation unless they refuse to participate. If the patient refuses to participate, the facility shall document the patient refusal in the patient's record. At a minimum, the patient plan of care shall demonstrate an interdisciplinary team member discussed the content with the patient or the patient's legal representative.

(f) Facility staff shall develop and implement the patient plan of care within 30 calendar days, or 13 outpatient dialysis treatments from the patient's admission to the facility, whichever occurs later. Facility staff shall revise the patient plan of care due to changes in the patient's personal treatment goals, lack of progress towards the patient's plan of care goals, marked deterioration in health status, significant changes in the patient's psychosocial needs, or changes in the patient's nutritional condition, as needed, but no less than annually after the date of the patient's last plan of care.

(g) The facility shall monitor the patient plan of care at least monthly to recognize and address any deviations from the patient plan of care by:

(1) implementing changes in interventions due to the lack of progress toward the patient's plan of care goals;

(2) documenting the reasons why the patient was unable to achieve the goals; and

(3) implementing changes to address the revised patient plan of care.

(h) Facility staff may conduct an interdisciplinary team conference via telehealth or telemedicine, which may include audio-only telecommunications. A telehealth or telemedicine patient plan of care conference conducted with the interdisciplinary team and the patient (or their legally authorized representative) shall be documented as such.

(i) In the case of disruptive patients or family members or patients who do not conform to the treatment plan, the facility shall develop, implement, and enforce a process for more intensive interdisciplinary team intervention with this patient to include assessment of needs and planned interventions to assist the patient in adjusting to the requirements for safe care.

(1) The facility shall contact the End Stage Renal Disease Network for assistance with these patients before considering an involuntary discharge of the disruptive patient.

(2) The facility shall establish, implement, and enforce a policy allowing a disruptive or noncompliant patient or family member the opportunity and assistance to improve any problematic behavior before their dismissal from the facility, in accordance with the requirements of this section.

(j) A facility shall not violate Texas Occupations Code Chapter 102 (relating to Solicitation of Patients).

#### §507.46. Emergency Preparedness.

(a) In this section, unless the context clearly indicates otherwise, "emergency" means an incident likely to threaten the health, welfare, or safety of a facility's patients, facility staff, or the public, including a fire, equipment failure, power outage, flood, interruption in utility service, medical emergency, or natural or other disaster.

(b) In accordance with Texas Health and Safety Code §251.016 (relating to Emergency Preparedness and Contingency Operations Planning), a facility shall implement a written emergency preparedness and contingency operations plan that describes staff and patient actions to manage potential medical and nonmedical emergencies, including fire, equipment failure, power outages, medical emergencies, and natural or other disasters that are likely to threaten the health, welfare, or safety of the facility patients, staff, or public. The plan shall comply with the following requirements.

(1) The facility shall update the plan at least annually.

(2) The facility's leadership shall approve the plan each time the facility updates the plan.

(3) The plan shall include:

(A) procedures for notifying each of the following entities, as soon as practicable, regarding facility closure or reduction in hours of operation due to an emergency:

(i) the Texas Health and Human Services Commission (HHSC);

(ii) each hospital with which the facility has a transfer agreement in accordance with subsection (j) of this section;

(iii) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(iv) each applicable local emergency management agency;

(B) a documented patient communications plan that includes procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted;

(C) a continuity of care plan for the provision of dialysis treatment to facility patients during an emergency that meets the requirements under subsection (d) of this section; and

(D) a disaster preparedness plan for natural and other disasters that:

(i) is specific to the facility based on an assessment of the probability and type of disaster in the region and the local resources available to the facility;

(ii) incorporates the use of the HHSC-approved reporting system and participation in the End Stage Renal Disease (ESRD) Network disaster preparedness activities;

(iii) includes procedures designed to minimize harm to patients and staff along with ensuring safe facility operations;

(iv) along with in-service programs for patients and staff, includes provisions or procedures for responsibility of direction and control, communications, alerting and warning systems, evacuation, and closure;

(v) requires each staff member employed by or under contract with the facility to be able to demonstrate their role or responsibility to implement the facility's disaster preparedness plan.

(vi) designates a staff member in each facility to monitor and coordinate disaster preparedness activities;

(vii) maintains in each facility documentation of the monitoring and coordination of disaster preparedness activities; and

(viii) addresses the continuity of essential building systems, including emergency power and water, or a contract with another licensed ESRD facility to provide emergency contingency care to patients to meet the requirements of §507.501(i) of this chapter (relating to Fire Prevention, Protection, and Emergency Contingency Plan); and

(4) except as provided by subsection (c) of this section, requires a facility to execute a contract with another ESRD facility located within a 100-mile radius of the facility stipulating that the other ESRD facility will provide dialysis treatment to facility patients who are unable to receive scheduled dialysis treatment due to the facility's closure or reduction in hours.

(c) A facility is not required to contract with another ESRD facility under subsection (b)(4) of this section if:

(1) no other ESRD facility is located within a 100-mile radius of the facility; and

(2) the facility obtains written approval from HHSC exempting the facility from that requirement.

(d) A facility shall develop a continuity of care plan for provision of dialysis treatment to facility patients during an emergency that:

(1) includes procedures for distributing written materials to facility patients that specifically describe the facility's emergency preparedness and contingency operations plan;

(2) includes detailed procedures on the facility's contingency plans, based on the facility's patient population, including transportation options, for patients to access dialysis treatment at each ESRD facility with which the facility has an agreement or made advance preparations to ensure that the facility's patients have the option to receive dialysis treatment and procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted;

(3) is approved by the facility's leadership; and

(4) is provided by the facility to each patient before providing or scheduling dialysis treatment.

(e) On request, a facility shall provide the facility's emergency preparedness and contingency operations plan adopted under subsection (b) of this section to:

(1) HHSC;

(2) each hospital with which the facility has a transfer agreement in accordance with subsection (j) of this section;

(3) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(4) each applicable local emergency management agency.

(f) A facility shall provide annual training to facility staff on the facility's emergency preparedness and contingency operations plan required by subsection (b) of this section.

(g) A facility shall annually contact a local and state disaster management representative, an emergency operations center in its local jurisdiction, and a trauma service area regional advisory council to:

(1) request comments on whether the emergency preparedness and contingency plan adopted by the facility under subsection (b) of this section should be modified; and

(2) ensure that local agencies, regional agencies, state agencies, and hospitals are aware of the facility, the facility's policy on provision of life saving treatment, the facility's patient population and potential transportation needs, and the anticipated number of patients affected.

(h) A facility shall have a functional plan to access emergency medical services.

(i) A facility shall have personnel qualified to operate emergency equipment and provide emergency care to patients on site and available during all treatment times. A charge nurse qualified to provide basic cardiopulmonary life support (BCLS) shall be on site and available to the treatment area whenever patients are present. All direct care staff members shall maintain current certification and competency in BCLS.

(j) A facility shall have a transfer agreement with one or more hospitals that provide acute dialysis service for provision of inpatient care and other hospital services to the facility's patients. The facility shall have documentation from the hospital to the effect that patients from the facility shall be accepted and treated in emergencies. There shall be reasonable assurances in the transfer agreement that:

(1) whenever a transfer or referral is deemed medically appropriate by the attending physician, the hospital and facility shall coordinate the patient's transfer or referral to ensure timely acceptance and admission;

(2) the interchange of medical and other information necessary or useful in the transferred patient's care and treatment shall occur within one business day; and

(3) the facility shall ensure the security and accountability of the transferred patient's personal effects.

(k) A facility shall post a telephone number specific to the facility's equipment and locale to assist staff in contacting mechanical and technical support in the event of an emergency.

(l) The facility shall maintain information on the HHSC-approved reporting system and update online monthly.

§507.47. Medication Storage and Administration.

(a) The facility shall provide pharmaceutical and therapeutic items in accordance with accepted professional principles and federal and state laws and regulations.

(b) Facility staff shall administer medications only when the patient's physician, attending physician, physician assistant (PA) or an advanced practice registered nurse (APRN) orders the medication. Facility staff shall administer medication as ordered.

(c) The sponsoring physician shall document and authenticate or countersign all physician, PA, or APRN orders within 15 calendar days from the date the physician, PA or APRN gave the order.

(d) The facility shall properly store and safeguard medications maintained in the facility in enclosures of sufficient size, which are not accessible to unauthorized individuals. The facility shall maintain refrigerators used for medication storage with documentation of the appropriate temperatures for such storage.

(e) A facility shall maintain emergency medications, as specified by the medical director, to treat the emergency needs of patients.

(f) Facility staff shall not prepare medications for administration in the patient's immediate treatment area. The medication preparation area shall include a work counter and a sink in an area to prevent contamination of medicines being prepared for administration.

(g) Facility staff shall not take medication vials to a patient station. Facility staff shall not puncture more than once intravenous medication vials labeled for single use.

(h) Facility staff shall label medications not given immediately with the patient's name, medication name, dosage prepared, and initials of the staff member preparing the medication. Facility staff shall protect medications not given immediately to prevent contamination and casual access of the prepared medications to unauthorized individuals. The facility staff who prepared the medication shall administer the medication.

(i) Facility staff shall not draw saline from the IV bag or tubing in use for the patient and shall prepare saline in a clean medication preparation area separate from potentially contaminated items and surfaces.

(j) Licensed nurses, physician assistants, or physicians shall administer all medications except intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, and oxygen, which may be administered as part of a routine hemodialysis treatment by dialysis technicians qualified according to §507.72 of this chapter (relating to Training Curricula and Instructors) and §507.73 of this chapter (relating to Competency Evaluation). Such administration

by dialysis technicians shall comply with Texas Occupations Code Chapter 157 (relating to Authority of Physician to Delegate Certain Medical Acts).

§507.48. Nursing Services.

(a) The facility shall provide nursing services to prevent or reduce complications, maximize the patient's functional status, and educate the end stage renal disease patient, patient's family, patient's caregiver, or significant other.

(b) The facility shall employ a full-time supervising nurse to supervise and manage the provision of safe patient care. A facility shall not use contract staff as a full-time supervising nurse.

(c) The facility shall ensure a registered nurse is in the facility when patients are present in the facility.

(1) The facility's governing body shall develop policies and procedures for allowing patients in the building when a registered nurse is not present and inclement weather or safety concerns exist. The policies and procedures shall require a review of any occurrence when patients are allowed in the building when a registered nurse is not present. Facility staff shall present the date of the incident, reasons, patients affected, and staff present to the facility's quality assessment and performance improvement (QAPI) committee and governing body for review and development of an appropriate plan.

(2) In inclement weather or due to safety concerns, when two or more basic cardiopulmonary life support-trained staff members are in the facility, patients may enter the facility lobby in accordance with the facility's policies and procedures.

(d) A registered nurse shall conduct:

(1) admission nursing assessments;

(2) assessments of a patient upon a change in the patient's status, extended or frequent hospitalizations, or at the patient's request;

(3) pre-dialysis evaluations on all patients within the first hour of treatment each time the patient receives treatment; and

(4) immediate post-dialysis assessments if an abnormal finding or change of condition is identified pre-dialysis, intradialytic, or post-dialysis.

(e) A registered nurse shall participate in the interdisciplinary team review of a patient's progress and recommend changes in treatment based on the patient's current needs and facilitate communication between the patient, patient's family, and the patient's significant other, as applicable, and other interdisciplinary members, to ensure the facility delivers the necessary care.

(f) A registered nurse shall provide oversight and direction to dialysis technicians and licensed vocational nurses.

(g) A registered nurse shall participate in the facility's QAPI activities.

(h) A registered nurse functioning in the charge role shall be present during all dialysis treatments.

(i) If the facility provides pediatric dialysis, a registered nurse with experience or training in pediatric dialysis shall be available to provide care for pediatric dialysis patients smaller than 35 kilograms in weight.

(j) The facility shall ensure sufficient direct care staff, as defined in §507.2(26) of this chapter (relating to Definitions), are on site to meet the needs of the patients, and at least one licensed nurse is available on site for every 12 patients or portion thereof, as demonstrated in Figure: 26 TAC §507.60. The nurse can be either a registered nurse

(RN) or licensed vocational nurse (LVN). A registered nurse functioning in the charge role shall be present during all dialysis treatments.

(1) During treatment of seven or fewer patients, direct care staff shall consist of at least one registered nurse and one direct care staff, as demonstrated in Figure: 26 TAC §507.60.

(2) During treatment of 8-12 patients, two licensed nurses shall be available, only one of which shall be a charge nurse with no direct patient care assignment, as demonstrated in Figure: 26 TAC §507.60. The nurse can be either an RN or LVN.

(3) For pediatric dialysis patients, one registered nurse shall be provided on site for each patient weighing less than 10 kilograms and one registered nurse provided on site for every two patients weighing from 10 to 20 kilograms.

(k) A facility shall ensure patients are in view of staff during hemodialysis treatments, and staff shall observe the patient, their access site, and their bloodline connections during the dialysis treatment.

(l) The facility shall include documentation in the patient's record verifying the patient was educated during treatment, upon admission, and annually on the importance of leaving their access sites uncovered.

(m) A licensed nurse or dialysis technician shall collect and document objective and subjective data for each patient before and after treatment, according to facility policy and the staff member's level of training.

(1) The facility shall have written policies and procedures specific to the facility to guide nursing staff actions in the event a patient's condition deteriorates during treatment to identify parameters which would require a patient be referred to a nurse for evaluation.

(2) A registered nurse shall conduct a patient assessment when indicated by a question relating to a change in the patient's status or at the patient's request.

(n) A registered nurse shall conduct the initial patient assessment before the patient's first dialysis treatment by the facility.

(o) This chapter does not preclude a licensed vocational nurse (LVN) from practicing in accordance with the rules adopted by the Texas Board of Nursing. If the LVN is acting in the capacity of a dialysis technician, the facility shall determine that the LVN has passed a training and competency evaluation curriculum that meets the requirements in §507.72 of this chapter (relating to Training Curricula and Instructors) and §507.73 of this chapter (relating to Competency Evaluation).

(p) A dialysis technician providing direct patient care shall demonstrate knowledge and competency for the responsibilities specified in §507.72 and §507.73 of this chapter.

#### §507.49. Nutrition Services.

(a) A facility shall provide nutrition services to a patient and the patient's caregivers to maximize the patient's nutritional status.

(b) The dietitian shall be responsible for:

(1) conducting a nutrition assessment of a patient;

(2) participating in an interdisciplinary team review of a patient's progress;

(3) recommending therapeutic diets in consideration of cultural preferences and changes in treatment based on the patient's nutritional needs in consultation with the patient's physician;

(4) counseling a patient, a patient's family, and a patient's significant other, as applicable, on prescribed diets and monitoring adherence and response to diet therapy;

(5) referring a patient for assistance with nutrition resources such as financial assistance, community resources, or in-home assistance;

(6) participating in the facility's quality assessment and performance improvement (QAPI) activities; and

(7) providing ongoing monitoring of subjective and objective data to determine the need for timely intervention and follow-up, including weight changes, blood chemistries, adequacy of dialysis, and medication changes that affect nutrition status and potentially cause adverse nutrient interactions.

(c) The dietitian shall contact the patient to document and complete the patient's comprehensive nutrition assessment with an educational component no later than 30 calendar days or 13 treatments after the patient's admission to the facility, whichever occurs later.

(d) The dietitian or their designee shall conduct a nutrition reassessment no less than annually or upon a change in the patient's status, extended or frequent hospitalizations, a change in the patient's modality, or at the patient's request.

(e) Each facility shall employ or contract with a dietitian to provide clinical nutrition services for each patient.

(1) The maximum caseload for a full-time equivalent dietitian is 100 patients. The caseload is cumulative across all modalities and facilities where the dietitian is employed.

(2) A facility shall employ or contract a second full-time equivalent dietitian if the first dietitian's patient caseload is over 100.

(f) The facility shall ensure nutrition services are available at the facility during scheduled patient treatment times. A patient may need an appointment to access nutritional services.

(g) A facility shall have written physician standing orders specific to that facility authorizing delegation of responsibilities for the facility dietitian, as determined by the medical director and the facility.

(1) The medical director shall review and approve the standing orders at least annually.

(2) The standing orders shall be consistent with the statutes and rules of the Texas Medical Board, Texas Board of Nursing, and Texas Department of Licensing and Regulation.

(h) When the facility uses a medication algorithm or protocol for managing renal bone disease, the nutritional care for each patient shall be individualized.

#### §507.51. Social Services.

(a) A facility shall provide social services to patients and their families that are directed at supporting and maximizing the patient's adjustment, social functioning, and rehabilitation.

(b) The social worker is responsible for:

(1) conducting psychosocial evaluations, which include health-related quality of life surveys;

(2) participating in the interdisciplinary team review of a patient's progress;

(3) providing an ongoing assessment and recommend changes in treatment based on the patient's current psychosocial needs;

(4) providing social work interventions including counseling, case work, and group work services to patients and their families experiencing special problems associated with end stage renal disease;

(5) identifying community social agencies and other community resources, and assisting patients and families to use them;

(6) participating in the facility's quality assessment and performance Improvement (QAPI) activities; and

(7) assisting patients to achieve optimum levels of productive activity and making rehabilitation referrals as appropriate.

(c) The facility shall ensure the social worker initially contacts the patient and documents the initial contact no later than 30 calendar days or 13 treatments from the patient's admission, whichever occurs later. Qualified facility staff shall complete comprehensive psychosocial assessment no later than 30 calendar days or 13 treatments from the patient's admission to the facility, whichever occurs later.

(d) Qualified facility staff shall conduct a governing-body-approved psychosocial and quality of life reassessment as needed, but no later than 90 calendar days after the initial assessment and at least annually thereafter, and when there is:

(1) a significant change to the patient's psychosocial needs;

(2) extended or frequent hospitalizations;

(3) any event that would interfere with the patient's ability to follow aspects of the plan of care;

(4) a change in the patient's modality; or

(5) at the patient's request.

(e) Each facility shall employ or contract with a social worker to meet the psychosocial needs of the patients.

(1) The facility shall ensure one full-time equivalent of qualified social worker time is available for up to 125 patients per facility, which is the maximum case load for all modalities available in the facility. The facility shall employ or contract a second social worker for a patient caseload over 125.

(2) The governing body shall ensure the facility assigns personnel to assist social workers with ancillary tasks, such as assistance with financial services, transportation, and administrative and clerical duties, when the patient load, including all modalities, exceeds 100 patients per facility. The maximum patient load is 125 patients per full-time equivalent qualified social worker with assigned personnel assistance, including all modalities.

(f) The facility shall ensure social services are available at the facility during scheduled patient treatment times. A patient may need an appointment to access social services.

#### §507.52. Medical Services.

(a) The medical director shall meet the requirements set forth in the CMS Conditions for Coverage and is responsible for:

(1) developing facility treatment goals that are based on review of aggregate data assessed through quality assessment and performance improvement (QAPI) activities;

(2) ensuring adequate training of licensed nurses and dialysis technicians;

(3) adequate monitoring of patients and the dialysis process;

(4) developing, implementing, and enforcing all policies required by this chapter;

(5) ensuring the facility's attending physicians follow the facility's policies and procedures, and the physicians follow the facility's established treatment and clinical standards, including quality, safety, and infection control standards; and

(6) ensuring all facility care staff, including nurses, patient care technicians, social workers, dietitians, physicians, and other ancillary staff receive annual training in all modalities, including transplant.

(b) The facility shall meet the following requirements regarding medical staff responsibilities.

(1) Each patient shall be under the care of a licensed and qualified nephrologist on the medical staff, or a physician on the medical staff who has demonstrated experience treating dialysis patients for at least 18 months.

(2) Each pediatric dialysis patient shall be under the care of a pediatric nephrologist or under the care of an adult nephrologist with direct patient evaluation by a pediatric nephrologist as follows:

(A) for patients two years of age or younger, monthly (two of three evaluations may be conducted by phone);

(B) for patients 3-12 years of age, quarterly; and

(C) for patients 13-18 years of age, semiannually.

(3) For each patient receiving dialysis in the facility, a physician on the facility's medical staff shall see the patient at least twice a month, with visits separated by at least 10 calendar days.

(4) Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician assistant no less than once a month.

(A) If a home dialysis patient is seen by an advanced practice registered nurse or a physician assistant, the physician shall see the patient at least once every three months.

(B) The provider may conduct this visit in the dialysis facility, at the physician's office, or in the patient's home.

(C) The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(5) The facility shall ensure a physician on the medical staff is on call and available 24 hours a day (in person or by telecommunication) to patients and staff.

(6) The physician shall verify and sign all orders for treatment. Facility staff shall update routine orders for treatment at least annually. Any changes in patient treatment shall be per physician's order.

(A) Orders for hemodialysis treatment shall include length of treatment, dialyzer, blood flow rate, dialysate composition, target weight, all medications administered during or needed for treatment, and specific infection control measures, as needed.

(B) Orders for peritoneal dialysis treatment shall include fill volumes, number of exchanges, dialysate concentrations, catheter care, medications, and specific infection control measures, as needed.

(c) If the facility uses advanced practice registered nurses or physician assistants:

(1) the facility shall ensure documented evidence of communication with the treating physician whenever the advanced practice registered nurse or physician assistant changes treatment orders;



(2) the advanced practice registered nurse or physician assistant shall not replace the physician in participating in patient care planning or in QAPI activities;

(3) the advanced practice registered nurse or physician assistant shall not replace the physician for the completion of assessments, as defined by the CMS Conditions for Coverage, or for the twice monthly evaluation of the in-center dialysis patient;

(4) the advanced practice registered nurse or physician assistant shall notify the treating physician of patient medical emergencies;

(5) the advanced practice registered nurse or physician assistant shall meet the requirements established by the Texas Board of Nursing (for an advanced practice registered nurse) or the Texas Physician Assistant Board (for a physician assistant); and

(6) the advanced practice registered nurse or a physician assistant shall use mechanisms that provide authority for that care, which shall include protocols or other written authorization:

(A) reviewed and approved by the advanced practice registered nurse or physician assistant and the appropriate physician;

(B) signed by both the advanced practice registered nurse or physician assistant and the physician;

(C) reviewed and re-signed at least annually;

(D) maintained in the practice setting of the advanced practice registered nurse or physician assistant; and

(E) made available as necessary to the Texas Health and Human Services Commission (HHSC) to verify authority to provide medical aspects of care.

(d) The facility shall comply with Texas Health and Safety Code Chapter 166 (relating to Advance Directives) concerning out-of-hospital do-not-resuscitate orders.

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

(1) The facility may offer clinical experience to students, provided the instructor provides student supervision and assumes responsibility for all student activities occurring within the facility.

(2) A student may administer medications only if:

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

(B) under the direct supervision of a qualified registered nurse on staff at the facility.

(3) A facility shall not use a student to fulfill the requirement for administration of medications by licensed personnel.

(4) A facility shall not consider a student when determining staffing levels required by the facility.

(5) A student shall not mix concentrate or test water quality.

(6) A student shall not accept or transcribe physician orders.

(7) A student shall not conduct the assessments of new or unstable patients.

(8) A qualified registered nurse shall directly supervise the students to protect the students and facility patients.

#### §507.53. Home Dialysis Service.

(a) A facility that provides home dialysis training, and support shall ensure through its interdisciplinary team that home dialysis services are at least equivalent to those provided to in-facility patients and meet all applicable licensure rules.

(b) A facility shall provide a separate room for home dialysis services.

(1) The room shall include a handwashing sink with hands-free operable controls, warm water, and soap to facilitate handwashing. Provisions for hand drying shall be included at each handwashing sink.

(2) The facility shall clearly designate clean areas for preparing, handling, and storing medications and unused supplies and equipment. Facility staff shall not handle or store medications or clean supplies in the same or an immediately adjacent area where facility staff handle used supplies, equipment, or blood samples.

(3) The facility shall have a designated area with a separate sink for disposal of blood or body fluids. The facility shall clearly designate contaminated areas where staff handle used supplies, equipment, or blood samples.

(c) When a patient completes home dialysis training, the facility shall assign each individual home dialysis patient, regardless of modality, one machine for the patient's exclusive use in the home. A facility shall not assign multiple home dialysis patients to the same machine.

(d) For home dialysis patients, including all modalities, a facility shall maintain a staffing level of one full-time equivalent registered nurse per 20 patients, or portion thereof.

(e) A registered nurse shall conduct home dialysis training. Before permitting a registered nurse to provide home dialysis training to a patient and a patient's caregiver, the facility shall:

(1) verify the registered nurse has:

(A) at least 12 months clinical nursing experience; and

(B) a minimum of three months experience, occurring within the last 24 months, in the specific modality with the responsibility for training the patient and the patient's caregiver;

(2) evaluate and document the nurse's ability to independently provide home dialysis training;

(3) reassess the nurse's competency to provide home dialysis training three months after passing the initial competency exam; and

(4) ensure all competency evaluations administered under this subsection contain the facility staff's signature evaluating the nurse's competency to provide home dialysis training.

(f) A facility's medical director shall develop and approve the home dialysis training curriculum. The home dialysis training curriculum shall comply with the following requirements.

(1) Training for each home dialysis patient shall address the patient's specific needs in the nature and management of end stage renal disease in a manner that complies with all patient privacy and infection control requirements.

(2) Training shall include the full range of techniques associated with the treatment modality selected, including the effective use of dialysis supplies and equipment in achieving and delivering the physician's prescription.

(3) Training of the patient and caregiver, as applicable, shall include:

(A) effective and safe administration of erythropoiesis-stimulating agents (if prescribed) to achieve and maintain a target level hemoglobin, hematocrit, and blood pressure levels, or hematocrit, as written in the patient's plan of care;

(B) how to detect, report, and manage potential dialysis complications, including water treatment problems;

(C) availability of support resources and how to access and use resources;

(D) how to self-monitor health status and record and report health status information;

(E) how to handle medical and nonmedical emergencies;

(F) infection control precautions;

(G) proper waste storage and disposal procedures;

(H) how to order supplies on an ongoing basis;

(I) not using non-medical electrical equipment within six feet of the home hemodialysis machine; and

(J) notifying the facility of any change in machinery used in home dialysis.

(4) Staff shall include documentation in the clinical record that the patient, the caregiver, or both, received and demonstrated adequate comprehension of the training.

(g) The interdisciplinary team shall oversee training of a home dialysis patient and the designated caregiver before the initiation of home dialysis, and when the home dialysis caregiver or home dialysis modality changes.

(h) A home dialysis training facility shall retrieve and review complete self-monitoring data and other information from the home dialysis self-care patient, or their designated caregiver, at least every two months, and maintain this information in the patient's clinical record in the facility.

(i) A home dialysis training facility shall furnish home dialysis support services, regardless of whether dialysis supplies may be provided by the dialysis facility or a durable medical equipment company.

(j) A home dialysis training facility shall provide services as follows.

(1) The facility shall complete an initial monitoring visit of the patient's home adaptation by facility personnel (including the registered nurse responsible for training the patient in the chosen modality and technical staff as appropriate) in accordance with the patient's plan of care, before the patient begins training for the selected home modality, and periodically thereafter.

(2) The facility must make a monitoring visit to the patient's home in case of:

(A) patient's change of address,

(B) change in the patient's primary caregiver,

(C) disaster that impacts the patient's home,

(D) major renovation, or

(E) any other event that may impact the patient's care.

(3) The prescribing physician, advanced practice registered nurse, or physician assistant shall see the patient no less than once a month.

(A) The prescribing physician shall see the patient at least once every three months if an advanced practice registered nurse or physician assistant sees the patient monthly.

(B) The prescribing physician may conduct the visit in the dialysis facility, at the physician's office, or in the patient's home.

(4) The interdisciplinary team shall develop and periodically review an individualized and comprehensive plan of care for the patient. The plan of care shall specify the services necessary to address the patient's needs and meet the measurable and expected outcomes, which meet a hemodialysis Kt/Vurea (Kt/V) of at least 1.2 (three times a week), or standard Kt/V of 2.0 (four to six times a week), or a peritoneal dialysis weekly Kt/V of at least 1.7, or meet an alternative equivalent professionally-accepted clinical practice standard for adequacy of dialysis.

(5) The facility shall provide patient consultation with interdisciplinary team members as needed.

(k) A home dialysis training facility shall monitor the quality of water and dialysate used by a home hemodialysis patient, including an initial on-site evaluation and testing of the water and dialysate system, and any time facility staff repairs or exchanges the water treatment equipment.

(1) A home dialysis training facility shall annually analyze the product water used for dialysate preparation to ensure the water meets the standards listed in §507.30 of this chapter (relating to Technical Standards).

(2) A home dialysis training facility shall test the water and dialysate system in accordance with the manufacturer's direction for use.

(3) A home dialysis training facility shall test the water and dialysate system in accordance with the system's United States Food and Drug Administration (FDA) approved labeling, for integrated hemodialysis system designed, tested, and validated to meet the quality (including standards for chemical and total chlorine or chloramines testing) water and dialysate required by standards listed in §507.30 of this chapter. The facility shall meet testing and other requirements of the standards listed in §507.30 of this chapter, when using an integrated water and dialysate system, which is designed and validated to meet the standards listed in §507.30 of this chapter.

(4) A home dialysis training facility shall perform bacteriological and endotoxin testing of water used for dialysate preparation and dialysate monthly and ensure the results are within the limits allowed by the standards listed in §507.30 of this chapter.

(l) The dialysis facility shall correct any water and dialysate quality problem for the home hemodialysis patient, and if necessary, arrange for backup dialysis until the facility corrects the problem if:

(1) an analysis of the water and dialysate quality indicates contamination; or

(2) the home hemodialysis patient demonstrates clinical symptoms associated with water and dialysate contamination.

(m) The dialysis facility shall be responsible for arranging the purchase, lease, or rental of medically necessary home dialysis supplies and equipment, and the delivery, installation, repair, and maintenance of these supplies and equipment (including supportive equipment), as prescribed by the attending physician. If the patient purchases, leases or rents dialysis equipment, the facility shall ensure the equipment's installation, repair, and maintenance in accordance with the manufacturer's directions for use.

(n) The dialysis facility shall identify a plan and arrange for emergency backup dialysis services when needed.

(o) The dialysis facility shall maintain a recordkeeping system that ensures continuity of care and patient privacy.

(p) The dialysis facility shall culture and measure the hemodialysis machines of home patients for colony forming units and endotoxins before disinfection. The facility shall follow the manufacturer's recommendations regarding the proper procedure for disinfection. For integrated hemodialysis system devices, facility staff shall follow the device's FDA labeling and manufacturer's recommendations as they may not require disinfection, culture, and measurement for colony forming units and endotoxins.

(q) As applicable, the facility shall maintain maintenance records for all dialysis machines and dialysis equipment at the licensed facility site.

(r) If required, the electrical connection for the home hemodialysis machines shall be connected to a ground-fault circuit interrupter (GFCI) receptacle in accordance with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(s) The dialysis machine shall comply with the requirements of §507.33 of this chapter (relating to Water Treatment). The facility shall ensure that the water pressure in the patient's home meets the minimum requirement specified by the water treatment system's manufacturer.

(1) The facility shall meet the following requirements for an integrated hemodialysis system.

(A) The facility shall analyze the source water used for dialysate annually or if there is a change in the source water, to ensure the water quality meets the manufacturer's guidelines for source water purity.

(B) The facility shall obtain the product water chemical quality every six months before replacing the water purification disposable component, or when any modifications are made to the integrated hemodialysis system to ensure that the product water meets the current CMS guidelines.

(C) The facility shall provide a means for patients to sample the product water to test for chlorine or chloramines, or total chlorine levels immediately before using the dialysate. The chlorine or chloramines level shall be less than 0.1 mg/L, and the results shall be documented by the patient.

(D) If applicable, the facility shall obtain the microbiological quality of the dialysate at the end of a prepared dialysate bag, with the requirements at §507.33 of this chapter and §507.34 of this chapter (relating to Dialysate).

(2) If using a dialysis system that uses manufactured dialysate solution in its existing form, the facility shall use the system according to manufacturer's directions. The facility shall ensure patients receive necessary training and can demonstrate competencies to follow the manufacturer's directions for use.

(3) If using a peritoneal dialysis system that uses manufactured dialysis solution the facility shall use the system according to manufacturer's directions. The facility shall ensure that patients are trained and can demonstrate competencies to follow the manufacturer's directions for use.

(4) If using sorbent technology, the patient or facility staff shall test the sorbent regeneration dialysis system (machine) before each treatment with the manufacturer's self-test method, and the patient or facility staff shall document evidence of the self-test. The facility shall analyze the source water used for dialysate to ensure the

water quality meets the manufacturer's guidelines for source water purity annually or if there is a change in the source water.

#### §507.54. Staff Qualifications.

(a) Facility staff (whether employees or contractors) shall meet the personnel qualifications and demonstrated competencies necessary to serve the needs of the patients. Facility staff shall demonstrate and sustain the skills needed to perform the specific duties of their positions.

(1) The facility shall develop and implement a written orientation program to familiarize all new employees (including office staff) with the facility, its policies, and their job responsibilities. The facility shall ensure that each new direct care staff member (whether employee or contractor) receives sufficient time to become familiar with the facility.

(A) The orientation program shall meet the following minimum time requirements.

(i) For individuals with previous dialysis experience, the orientation program shall be two weeks.

(ii) For new direct care staff members with no previous dialysis experience, the orientation program shall be two weeks plus additional time as determined by the facility.

(B) In facilities with similar policies and equipment, staff with dialysis experience oriented to one facility may be shared with another facility after a shorter orientation period. Each facility where a shared employee works shall keep documentation on file of the shared staff's current competency and tasks delegated by that facility's medical director to unlicensed technicians.

(C) A facility shall provide registered nurses with no previous dialysis experience an orientation program of a minimum of seven weeks. The seven-week orientation program shall contain content specific to end stage renal disease patient management and appropriate to the population served by the facility, including at least:

(i) fluid, electrolyte, and acid-base balance;

(ii) kidney disease and treatment;

(iii) dietary management of kidney disease;

(iv) principles of dialysis;

(v) dialysis technology;

(vi) venipuncture technique;

(vii) care of the dialysis patient;

(viii) psychological, social, financial, and physical complications of long-term dialysis;

(ix) prevention of hepatitis and other infectious diseases;

(x) risks and benefits of reuse (if reuse is practiced);

(xi) all available treatment modalities, including the availability of kidney transplantation.

(2) A facility shall ensure each licensed nurse and dialysis technician demonstrates competency through written and skills testing after they complete the orientation program and annually thereafter. The facility shall maintain documented evidence of competency in writing in personnel files. Current certification by a nationally recognized board may substitute for the annual written test. The facility shall ensure all dialysis technicians receive certification from a national

commercially available certification program within 24 months of being hired as a dialysis technician.

(b) The facility administrator shall have at least one year of experience working in a health care facility as defined in section §507.2(40) of this chapter (relating to Definitions).

(c) A facility shall ensure medical staff meet the following requirements.

(1) Each physician on the medical staff shall have a current license to practice medicine in the state of Texas.

(2) If a facility uses an advanced practice registered nurse, that individual shall meet the requirements established by the Texas Board of Nursing in Texas Administrative Code, Title 22 (22 TAC), Chapter 221 (relating to Advanced Practice Nurses).

(3) If a facility uses a physician assistant, that individual shall meet the requirements established by the Texas Medical Board in 22 TAC Chapter 185 (relating to Physician Assistants).

(d) A facility shall ensure nursing staff meet the following requirements.

(1) Each individual licensed as a nurse shall have a current Texas license to practice nursing in accordance with the statutes and rules of the Texas Board of Nursing, or a current license from another state in the Nurse Licensure Compact (NLC).

(2) Each registered nurse assigned charge nurse responsibilities shall have at least 12 months of clinical experience and six months experience in hemodialysis after completing the facility's training program.

(A) For a newly licensed registered nurse, the last six months of clinical experience may run concurrently with the six months of dialysis experience.

(B) The hemodialysis experience shall be within the last 24 months.

(C) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the six months experience in dialysis obtained within the last 24 months.

(3) The facility shall document written physician standing orders, specific to the facility, in the patient's clinical record to guide nursing staff actions in the event a patient's condition deteriorates during treatment. The medical director shall review and approve these standing orders at least annually, consistent with the Texas Medical Board statutes and rules and the Texas Board of Nursing statutes, rules, and policy statements for registered nurses and licensed vocational nurses.

(4) If a facility provides patient in-center or home training, a registered nurse with at least 12 months clinical experience and three months experience in the specific modality, shall be responsible for training the patient or family in that modality. When other personnel assist in the training, the qualified registered nurse shall supervise the training.

(5) When other personnel assist in training a patient or the patient's caregiver for self-care training, the facility shall document in the employee's personnel record that the employee is qualified, as approved by the medical director, to assist in the training.

(6) The facility shall establish a nursing peer review committee to conduct nursing peer review, as required by Texas Occupations Code Chapter 303 (relating to Nursing Peer Review).

(e) Each dietitian shall have a current Texas license, be a registered dietitian, and have a minimum of one year of professional work experience in clinical dietetics after becoming a registered dietitian.

(f) Each social worker shall:

(1) hold a current license as a social worker under Texas Occupations Code Chapter 505 (relating to Social Workers) and hold a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

(2) have at least two years of work experience as a social worker, one year of which was in a dialysis facility or transplantation program before September 1, 1976, and have an established consultative relationship with a social worker who has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

(g) A facility shall ensure biomedical technical staff meet the following requirements.

(1) The facility's biomedical technical staff may be one or more individuals (including nursing staff) employed by or under contract with the facility as long as the individual meets the minimum qualifications for each required level of responsibility, as described in this subsection.

(2) The facility shall have written physician authorized delegation of responsibilities for the biomedical technical staff as determined by the medical director and the facility.

(3) Only individuals qualified by training, education, or experience may operate, repair, or replace components of the systems used in providing dialysis treatment or reprocessing dialyzers.

(A) Technical staff shall have minimum education, training, and experience documented and maintained on file in the facility, which includes:

(i) a high school diploma or equivalent, except for technical staff employed by the facility for two or more years before April 11, 1999, who are exempt from this requirement; and

(ii) training or experience, including at least:

(I) completion of a college-based technical dialysis program;

(II) completion of the didactic training and education requirement for patient care technicians set out in §507.72(a) and (b) of this chapter (relating to Training Curricula and Instructors);

(III) current certification in technical aspects of dialysis by a nationally recognized testing organization; or

(IV) 12 months experience in dialysis within the last two years.

(B) Any staff member assigned responsibilities in the technical area shall pass an annual written competency examination, demonstrate skills related to the required level of responsibility, and be certified by the facility's medical director as competent to perform their assigned duties. Current certification by a national board in dialysis technology may substitute for the written test.

(C) The technical staff shall annually complete a minimum of five hours of continuing education with a technical or end stage renal disease focus. Facility staff may provide continuing education. Continuing education documentation shall include the continuing education course title, duration, and author or instructor.

(4) The technical supervisor is responsible for supervision of technical services. The technical supervisor shall meet the education, training, and experience requirements described in this paragraph.

(A) The technical supervisor shall meet the requirements in paragraph (3) of this subsection.

(B) The technical supervisor shall ensure technical staff demonstrate competency in equipment maintenance and repair, mechanical service, water treatment systems, and reprocessing of hemodialyzers, if applicable.

(i) Before assuming technical supervisory responsibility, a technical supervisor trainee shall successfully complete the facility's orientation and training courses as established for each technical area.

(ii) The medical director shall approve the training courses. The training courses shall follow a written curriculum with stated objectives. The curriculum shall include all items noted in this clause and paragraph (5)(B) of this subsection.

(5) Facility staff responsible for the water treatment and dialysate systems shall demonstrate understanding of the risks to patients of exposure to water that has not been treated to remove contaminants and impurities.

(A) The facility shall maintain training documentation for each individual who operates (regularly or intermittently) these systems to ensure safe operation of the water treatment and dialysate systems.

(B) The staff responsible for water treatment and dialysate systems shall meet the education, training, and experience requirements described in paragraph (3) of this subsection and shall demonstrate competency by:

(i) successful completion of the facility training course specific to water treatment, dialysate preparation, and related tasks, which must be approved by the medical director and follow a written curriculum with state objectives;

(ii) completion of a training curriculum that includes

(I) introduction to end stage renal disease;

(II) principles of hemodialysis;

(III) principles of infection control and basic microbiology for water treatment systems, machines, and sampling techniques;

(IV) rationale for water treatment for dialysis;

(V) risks and hazards of using unsafe water for dialysis;

(VI) current water standards;

(VII) source water characteristics;

(VIII) communication with source water agencies and water treatment vendors;

(IX) selection of water treatment equipment;

(X) water purification equipment, to include filtration, carbon adsorption, and reverse osmosis;

(XI) ion exchange to include softeners and deionizers;

(XII) water distribution system and other equipment specific to the facility;

(XIII) monitoring system performance, to include online and offline monitoring, aseptic sample collection, incubation of samples, and interpretation of results;

(XIV) evaluation of water treatment component performance, to include filters, activated carbon adsorption beds, reverse osmosis, and ion exchange;

(XV) evaluation of system performance, to include monitoring schedules and review of system failures;

(XVI) purpose of each component of dialysate, to include electrolytes, glucose, acid, and buffer;

(XVII) hazards of exposure of patients to a dialysate containing a different concentration of electrolytes than prescribed;

(XVIII) testing methods in use to verify expected concentrations in any reconstituted components of the dialysate are achieved;

(XIX) action to take in the event testing of a mixed batch of dialysate concentrate does not meet the expected parameters;

(XX) labeling employed to positively identify each concentrate; and

(XXI) procedures to ensure the proper transfer of concentrates from the manufacturer's drums to the holding tanks;

(iii) confirmation of the ability to distinguish all primary colors; and

(iv) successful completion of the facility's orientation and training course as established for the water treatment and dialysate preparation systems technician trainee before the trainee's initial assumption of responsibility.

(6) The staff responsible for equipment maintenance and repair shall meet the education, training, and experience requirements described in paragraph (3) of this subsection and shall demonstrate competency by:

(A) successful completion of the facility training course outlined in paragraph (3) of this subsection, relating to water treatment systems;

(B) successful completion of a training curriculum, which includes:

(i) prevention of transmission of hepatitis through dialysis equipment;

(ii) safety requirements of dialysate delivery systems;

(iii) repair and maintenance of dialysis and other equipment specific to the facility;

(iv) electrical safety, including lockout or tagout;

(v) emergency equipment maintenance;

(vi) building maintenance;

(vii) fire safety and prevention requirements; and

(viii) emergency response procedures; and

(C) successful completion of a written competency exam and demonstration of skills specific to the facility's mechanical and equipment service and water treatment and distribution systems.

(7) The staff responsible for reprocessing hemodialyzers and other supplies shall meet the education, training, and experience requirements described in paragraph (3) of this subsection and shall demonstrate competency by:

(A) successful completion of a training curriculum that includes the components of the standards for reuse of hemodialyzers listed in §507.30 of this chapter (relating to Technical Standards); and

(B) successful completion of a written competency exam that includes return demonstration of skills specific to reprocessing of hemodialyzers and other dialysis supplies.

§507.55. Clinical Records.

(a) A facility shall develop, implement, and enforce policies and procedures for a clinical record system to ensure complete and accurate documentation of care provided to each patient. The clinical record system shall make documentation readily available and systematically organized to facilitate the compilation and retrieval of information.

(1) The facility shall centralize all information in the patient's clinical record and protect the record against loss or damage in accordance with state and federal regulations.

(2) The facility shall provide an area for clinical records storage that is separate from all patient treatment areas and secured from unauthorized access. The facility shall store the active clinical record of each patient currently treated by the facility on site.

(3) The facility shall maintain the confidentiality of each patient's personal and clinical records.

(4) The facility shall not use signature stamps to authenticate clinical record entries.

(5) The facility may preserve clinical records electronically. Electronic records shall meet all requirements of paper records, including protection from casual access and retention for the specified period. Systems shall ensure that facility staff may not alter entries regarding the delivery of care without evidence and explanation of such alteration.

(6) The facility shall preserve inactive clinical records by electronic means and may store inactive records off site, as long as the facility maintains security, and ensures the record is readily retrievable for review by the Texas Health and Human Services Commission (HHSC) or HHSC designee.

(7) Each patient's clinical record, whether hard copy, electronic, or a combination of both, shall include complete and pertinent information about the patient's condition, assessments by the interdisciplinary team, updated plans of care, all interventions and treatments prescribed and delivered, and details of any events occurring with the patient during treatment. The record of care shall be readily accessible to every authorized interdisciplinary team member so that safe care can be coordinated to best meet the patient's needs.

(8) Each clinical record shall include:

(A) identifying information;

(B) consents and notifications;

(C) details on how staff explained consent forms for treatment, whether staff obtained the patient's consent, and how staff explained to the patient the patient's rights and responsibilities;

(D) documentation that the physician explained the treatment risks, benefits, and complications to the patient before the patient's first treatment;

(E) documentation that a licensed registered nurse witnessed the patient signing the consent forms before the patient's first treatment;

(F) physician orders;

(G) progress notes;

(H) problem list;

(I) medical history and physical examination;

(J) professional assessments by the registered nurse, social worker, and dietitian;

(K) medications given during treatment, which may be listed on the treatment record; and a list of medications the patient takes at home;

(L) transfusion records;

(M) laboratory reports;

(N) diagnostic studies;

(O) hospitalization records;

(P) consultations;

(Q) records of creation and revision of access for dialysis;

(R) plans of care, including evidence of interdisciplinary team review and adjustment;

(S) evidence of patient education;

(T) daily treatment records; and

(U) discharge summary, if applicable.

(b) A facility physician shall complete a comprehensive medical history and physical examination no later than 30 calendar days from the patient's admission to the facility and at least annually thereafter.

(1) For a patient new to dialysis, the physician responsible for the dialysis care shall complete the history and examination.

(2) For an established dialysis patient, the history and examination may be completed by an advanced practice registered nurse or physician assistant.

(3) Before the first treatment in the facility, the physician shall inform the registered nurse functioning in the charge role of at least the patient's diagnoses, medications, hepatitis status, allergies, and dialysis prescription. The patient's clinical record shall include this data.

(c) The patient's clinical record shall provide an ongoing and accurate report of the patient's progress, reflecting changes in patient status, plans for and results of changes in treatment, diagnostic testing, consultations, and unusual events. Each interdisciplinary team member shall record the patient's progress as indicated by any change in the patient's medical, nutritional, or psychosocial condition.

(d) Facility staff shall note the patient's condition and response to treatment on the daily treatment record.

(e) A facility shall ensure care for transient patients meets the following requirements.

(1) Except as provided by paragraph (2)(B) of this subsection, before providing dialysis treatment to a transient patient the facility shall obtain and include, at a minimum:

(A) orders for treatment in this facility;

- (B) a list of medications and allergies;
- (C) laboratory testing results no earlier than one month before treatment, which include screening for Hepatitis B status;
- (D) the most current plan of care;
- (E) the most current treatment records from the home facility; and
- (F) records of care and treatment at this facility.

(2) If a facility dialyzes a patient who is normally dialyzed in another facility, the facility shall meet the following requirements.

(A) The facility shall continuously evaluate staffing levels and use this information in determining whether to accept a transient patient for treatment.

(B) If a transient patient arrives unannounced, the facility may provide dialysis after obtaining, at a minimum, from the patient records:

- (i) orders for treatment;
- (ii) Hepatitis B status; and
- (iii) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in this subsection.

(3) In the event a transient patient's hepatitis status is unknown, the patient may undergo treatment as if the Hepatitis B surface antigen (HbsAg) test results were potentially positive, except that the facility shall not treat such a patient in the HBsAg isolation room, area, or machine.

(f) Facility staff shall complete clinical records within 30 days after discharge. The discharge summary shall clearly identify the patient's disposition and include the diagnosis or cause of death, date of discharge or death, location of death, transplant, or relocation information when appropriate, and reason for discharge if not for transplantation or death.

(g) Clinical records are the facility's property, and the facility shall safeguard clinical records against loss, destruction, or unauthorized use.

(h) The facility shall provide copies of pertinent portions of a patient's record when the patient is transferred. The records provided shall include, at a minimum, the most current orders for dialysis treatment, last three treatment records, the current hepatitis status, and current plan of care. If the facility transfers the patient to another outpatient facility, the facility shall provide copies of the most recent history and physical and assessment of each interdisciplinary team member.

(i) The facility shall retain records for a minimum of five years after the patient's discharge and in accordance with state and federal regulations. The facility shall not destroy clinical records that relate to any matter that is involved in litigation, unless the litigation has been finally resolved.

(j) If a facility ceases operation, it shall arrange for the preservation of records to ensure compliance with this section. The facility shall notify HHSC in writing of the location of the clinical records and the clinical records custodian's name and address.

#### §507.56. Incident Reports.

(a) A facility shall report only the following incidents to the Texas Health and Human Services Commission (HHSC). The facility shall report these incidents to HHSC within 10 business days after the facility being informed or possessing knowledge of:

(1) the confirmed conversion of staff or a patient to Hepatitis B surface antigen (HbsAg) positive, unless it is a verified false positive.

(2) the involuntary transfer or discharge of a patient, unless the involuntary transfer or discharge is due to nonpayment or the patient was a participant in the ESRD Network's Second Chance program, in which case there is no incident report required if the patient is involuntarily discharged within the first 90 days of placement;

(3) a fire in the facility; and

(4) a generator out of operation.

(b) The facility shall report an incident listed in subsection (a) of this section to HHSC Complaint and Incident Intake through the HHSC online portal.

#### §507.57. Nonconventional Dialysis.

(a) A facility shall meet the following requirements for self-care.

(1) If a licensed dialysis facility offers in-center self-care in addition to conventional hemodialysis, the facility shall develop, implement, and maintain policies and procedures related to self-care, including policies regarding staffing levels in the self-care milieu.

(2) While nurse to patient ratios must remain the same, the facility may reduce the number of patient care technicians from a 4:1 ratio to a 6:1 ratio if:

(A) the self-care area is separated from the conventional dialysis area, such as in a separate bay or room within the facility; and

(B) self-care patients can, at a minimum, demonstrate the ability to:

(i) set up and tear down the machinery used in their treatment;

(ii) hold their own sites at termination of treatment, except for a catheter patient; and

(iii) monitor and record their own vital signs before beginning and ending the day's treatment.

(3) A licensed facility that offers the option of in-center self-care shall ensure that all assessments, evaluations, history and physicals, treatment plans, modality options education, and similar documents and activities are completed before starting or moving to self-care.

(4) Before a patient moves from conventional dialysis to self-care in a licensed dialysis facility, the patient shall demonstrate verbal understanding of competencies in the self-care areas, as determined by the facility staff.

(5) The facility shall maintain written documentation of self-care competencies via checklists and competency testing in the patient's medical record.

(6) The facility shall annually evaluate a patient's competency and skills to verify the patient maintains the abilities and knowledge to continue self-care. The facility shall document the annual evaluation in the patient's medical record. A patient may take on additional aspects of self-care. Before the patient may independently complete the additional self-care aspects, the facility shall evaluate the patient's competency to perform the self-care aspects and document the evaluation for additional self-care aspects in the patient's medical record. The facility shall annually re-evaluate the patient's competency to perform the additional self-care aspects.

(b) A facility shall meet the following requirements for transitional care services.

(1) A facility offering transitional services shall develop, implement, and enforce policies and procedures specific to operation of transitional services.

(2) Licensed dialysis facilities that offer transitional care shall ensure that all assessments, evaluations, history and physicals, treatment plans and similar documents and activities are completed before beginning treatment.

(3) A facility offering transitional services shall provide the patient with appropriate education regarding end-stage renal disease, its treatment and treatment availability, and advisability of all modalities to include renal transplant, dietary concerns and needs, and social services.

(4) A facility offering transitional services shall ensure the patient retains all rights applicable to treatment in a licensed dialysis facility. The interdisciplinary treatment team shall assess a patient for transitioning services no later than 30 calendar days after entry into the program. If the team determines a patient requires continued services only available in a conventional dialysis setting, the facility shall consider the patient for transfer to a conventional setting to continue the benefits of dialysis. The facility shall not consider this transfer as an involuntary discharge from the transitional facility.

(5) Transitional direct care staff shall receive equivalent training to both in-center and home hemodialysis staff, including training to the manufacturer's specifications of the hemodialysis machine being used. The facility shall keep available upon request documentation of the transitional direct care staff's:

(A) training and skills, and

(B) competencies as approved by the medical director.

(c) A facility shall meet the following requirements for integrated hemodialysis systems.

(1) A licensed facility offering the use of self-contained or integrated hemodialysis systems shall develop, implement, and enforce policies and procedures related to these systems and staff shall have verification of competency for each type of machine they perform or monitor treatments on.

(2) If the licensed dialysis facility uses self-contained or integrated hemodialysis systems along with conventional hemodialysis machines, the facility shall separate the self-contained units or integrated hemodialysis systems from the conventional machines.

(3) Each patient shall receive education on the self-contained unit's use and efficacy.

(4) A facility using solely self-contained or integrated hemodialysis systems shall follow the manufacturer's recommendations and instructions for the use of the machines.

(5) A licensed facility offering the use of self-contained or integrated hemodialysis systems shall maintain a copy of the manufacturer's instructions on each type of unit used in the facility. The facility shall provide inspectors with a copy of the manufacturer's instructions and recommendations upon request.

(6) A facility shall ensure a registered nurse is present in the integrated hemodialysis systems treatment area, and the facility shall maintain the same staffing ratios as for conventional dialysis.

§507.58. Staffing and Reporting Requirements During a Public Health Disaster.

(a) This section applies only to an end stage renal disease (ESRD) facility located in a county for which:

(1) the governor declared a state of disaster due to a pandemic or epidemic, pursuant to Texas Government Code Chapter 418 (relating to Emergency Management);

(2) the commissioner of the Texas Department of State Health Services determined that a public health disaster exists, pursuant to Texas Health and Safety Code Chapter 81 (relating to Communicable Diseases; Public Health Disasters; Public Health Emergencies); and

(3) the Texas Health and Human Services Commission (HHSC) designated this section as applicable, pursuant to paragraphs (1) and (2) of this subsection.

(b) An ESRD facility that is experiencing a documented, significant staffing shortage may temporarily adopt the accommodations under this section to meet patient needs for the duration of the public health disaster.

(c) Subject to HHSC approval, an ESRD facility may request a temporary exemption from staffing requirements:

(1) for nursing services, as specified in §507.48 of this subchapter (relating to Nursing Services);

(2) for nutrition services, as specified in §507.49 of this subchapter (relating to Nutrition Services);

(3) for social services, as specified §507.51 of this subchapter (relating to Social Services); and

(4) for staffing levels of direct care staff, as specified in §507.60 of this subchapter (relating to Staffing Table).

(d) Notwithstanding §507.43(e) of this subchapter (relating to Quality Assessment and Performance Improvement), core staff members shall actively participate in quality assessment and performance improvement (QAPI) activities and attend meetings every other month.

(e) Notwithstanding §507.47 of this subchapter (relating to Medication Storage and Administration), all verbal or telephone physician orders shall be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given.

(f) Notwithstanding §507.53 of this subchapter (relating to Home Dialysis Service), the staffing level for home dialysis patients, including all modalities, shall be one full-time equivalent registered nurse per 25 patients, or portion thereof.

(g) Notwithstanding §507.54(d)(2) of this subchapter (relating to Staff Qualifications), each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis after completion of the facility's training program. In addition:

(1) the registered nurse shall be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency;

(2) the registered nurse shall be certified by the facility's medical director and governing body;

(3) the hemodialysis experience shall be within the last 24 months; and

(4) a registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.



(h) Notwithstanding §507.54(d)(4) of this subchapter, if patient self-care training is provided, a registered nurse who has at least 12 months of clinical experience and three months of experience in the specific modality shall be responsible for training the patient or family in that modality. When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated.

(i) Notwithstanding the deadline provision of §507.56(a) of this subchapter (relating to Incident Reports), a facility shall report an incident listed in §507.56(a)(1) - (5) of this subchapter to HHSC within 20 business days of the incident.

(j) Notwithstanding §507.72(i) of this chapter (relating to Training Curricula and Instructors), for individuals with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

§507.59. Medical Services and Home Dialysis During a Public Health Disaster.

(a) This section applies only to an end stage renal disease (ESRD) facility located in a county for which:

(1) the governor declared a state of disaster due to a pandemic or epidemic, pursuant to Texas Government Code Chapter 418 (relating to Emergency Management);

(2) the commissioner of the Texas Department of State Health Services determined that a public health disaster exists, pursuant to Texas Health and Safety Code Chapter 81 (relating to Communicable Diseases; Public Health Disasters; Public Health Emergencies); and

(3) the Texas Health and Human Services Commission (HHSC) designated this section as applicable, pursuant to paragraphs (1) and (2) of this subsection.

(b) An ESRD facility may temporarily adopt accommodations under this section to meet patient needs, support infection control procedures, and maintain necessary social distancing in response to a public health disaster.

(c) Notwithstanding §507.52 of this subchapter (relating to Medical Services), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once a month during the patient's treatment time.

(d) Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician assistant no less than once a month.

(1) If home dialysis patients are seen by an advanced practice registered nurse or a physician assistant, the physician shall see the patient at least once every three months.

(2) This visit may be conducted using telemedicine medical services.

(3) The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(e) Notwithstanding §507.53 of this subchapter (relating to Home Dialysis Service), a registered nurse may conduct an initial monitoring visit of a patient's home adaptation before the patient

beginning training for the selected home modality from outside the patient's home if the nurse performs the visit using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home.

(1) The nurse shall conduct the visit to the same review standards as a normal face-to-face visit.

(2) If the nurse cannot perform the visit using a synchronous audiovisual interaction between the nurse and the patient, the nurse must conduct the visit in the patient's home.

(f) A provider may conduct a home patient visit required by §507.53 of this subchapter using telemedicine medical services.

§507.60. Staffing Table.

The attached graphic sets out minimum staffing levels for nursing staff, direct care staff, and total clinical staff.

Figure: 26 TAC §507.60

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

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



## SUBCHAPTER E. REQUIREMENTS FOR DIALYSIS TECHNICIANS

### 26 TAC §§507.71 - 507.75

#### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §524.0005, 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 Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The new rules implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

#### §507.71. General Requirements.

(a) An individual shall not act as a dialysis technician unless that individual is trained and competent as described in this subchapter.

(b) A trainee shall identify themselves as a trainee during any time spent in the patient treatment area.

(c) Until a trainee successfully completes the competency evaluation, a trainee may provide patient care only as part of a training program and under the immediate supervision of a registered nurse or an assigned preceptor. A preceptor shall be a licensed nurse or dialysis technician who has one year of experience in hemodialysis obtained within the last 24 months, a recommendation by the supervising nurse

to be a preceptor, and a current competency skills checklist on file in the facility.

(d) A facility shall have written physician standing orders specific to that facility authorizing delegation of responsibilities for a dialysis technician, as determined by the medical director and the facility.

(e) A facility allowing a dialysis technician who is not a licensed vocational nurse to initiate or discontinue dialysis via a central venous catheter or manipulate a central venous catheter shall adopt, implement, and enforce policies and procedures that require:

(1) the dialysis technician to be certified as a Certified Clinical Hemodialysis Technician (CCHT);

(2) the dialysis technician to take the training described in §507.72(c)(3) of this subchapter (relating to Training Curricula and Instructors);

(3) the dialysis technician to pass the competency evaluation described in §507.72(f) of this subchapter; and

(4) a nurse to supervise the dialysis technician and ensure the dialysis technician follows all facility policies and procedures.

§507.72. Training Curricula and Instructors.

(a) Each training program for dialysis technicians shall develop a written curriculum with objectives specified for each section.

(b) The training curriculum for dialysis technicians shall include:

(1) an introduction to dialytic therapies, history, and major issues to include:

(A) a history of dialysis;

(B) definitions and terminology;

(C) communication skills;

(D) ethics and confidentiality;

(E) multidisciplinary process;

(F) roles of other team members; and

(G) information about renal organizations and resources;

(2) the principles of hemodialysis to include:

(A) principles of dialysis;

(B) access to the circulatory system; and

(C) anticoagulation, local anesthetics, and normal saline;

(3) understanding the individual with kidney failure to include:

(A) basic renal anatomy, physiology, and pathophysiology;

(B) the effect of renal failure on other body systems;

(C) symptoms and findings related to the uremic state;

(D) modes of renal replacement therapy, including transplantation;

(E) basic renal nutrition;

(F) basic psychosocial aspects of end stage renal disease;

(G) medications commonly administered to patients with end stage renal disease;

(H) confidentiality of patient personal and clinical records;

(I) professional conduct;

(J) patient rights and responsibilities; and

(K) rehabilitation;

(4) dialysis procedures to include:

(A) using aseptic technique;

(B) technical aspects of dialysis, operation and monitoring of equipment, initiation and termination of dialysis;

(C) delivering an adequate dialysis treatment and factors that may result in inadequate treatment;

(D) observing and reporting patient reactions to treatment;

(E) glucose monitoring and hemoglobin and hematocrit monitoring;

(F) emergency procedures and responses, such as cardiopulmonary resuscitation, air embolism management, and response to line separation and hemolysis;

(G) external and internal disasters, fire, natural disasters, and emergency preparedness; and

(H) safety and quality assurance and performance improvement (QAPI);

(5) hemodialysis devices to include:

(A) theory and practice of conventional, high efficiency, and high flux dialysis;

(B) dialysate composition, options, indications, complications, and safety;

(C) monitoring and safety; and

(D) disinfection of equipment;

(6) water treatment to include:

(A) standards for water treatment used for dialysis listed in §507.30 of this chapter (relating to Technical Standards);

(B) systems and devices;

(C) monitoring; and

(D) risks to patients of unsafe water;

(7) reprocessing, if the facility practices reuse, to include:

(A) principles of reuse;

(B) safety, QAPI, universal precautions, and water treatment; and

(C) standards for reuse in the standards listed in §507.30 of this chapter;

(8) patient teaching to include:

(A) the technician's role in supporting patient education goals; and

(B) adult education principles;

(9) infection control and safety to include:

(A) risks to patients of nosocomial infections, accidents, and errors in treatment;

(B) universal precautions, aseptic technique, sterile technique, and specimen handling;

(C) basic bacteriology and epidemiology;

(D) risks to employees of blood and chemical exposure;  
and

(E) electrical, fire, disaster, environmental safety, and hazardous substances; and

(10) QAPI to include:

(A) the technician's role in QAPI activities;

(B) principles of QAPI; and

(C) the importance of ongoing QAPI activities in ensuring the facility provides safe dialysis treatments to patients.

(c) The facility's training curricula shall comply with the following requirements related to a dialysis technician's additional responsibilities.

(1) If a dialysis technician is to assist with training or treatment of peritoneal dialysis patients, the training shall include:

(A) principles of peritoneal dialysis;

(B) sterile technique;

(C) peritoneal dialysis delivery systems;

(D) symptoms of peritonitis; and

(E) other complications of peritoneal dialysis.

(2) If a dialysis technician, other than a licensed vocational nurse (LVN), is to cannulate access or administer normal saline, heparin, lidocaine, or oxygen, the content shall include:

(A) access to the circulation to include:

(i) for a fistula, creation, development, needle placement, and prevention of complications;

(ii) for a graft, creation, materials, needle placement, and prevention of complications; and

(iii) symptoms to report;

(B) safe administration of medications to include:

(i) identifying the correct patient;

(ii) ensuring the appropriate medication;

(iii) measuring the appropriate dose;

(iv) determining the appropriate route; and

(v) checking the appropriate time for administration;

(C) administration of normal saline to include:

(i) reasons for administration;

(ii) potential risks and complications;

(iii) administration limits; and

(iv) information to report and record;

(D) administration of heparin to include:

(i) reasons for administration;

(ii) methods of administration;

(iii) preparation of ordered dose;

(iv) potential risks and complications; and

(v) information to report and record;

(E) administration of lidocaine to include:

(i) reasons for administration;

(ii) method of administration;

(iii) preparation of ordered dose;

(iv) potential complications and risks; and

(v) information to report and record; and

(F) administration of oxygen to include:

(i) reasons for administration;

(ii) method of administration;

(iii) delivery of the ordered flow rate;

(iv) potential complications and risks; and

(v) information to report and record.

(3) If a dialysis technician, other than a licensed vocational nurse, is to initiate or discontinue dialysis via a central venous catheter or manipulate a central venous catheter, the content shall include:

(A) patient assessment;

(B) infection control and aseptic technique;

(C) materials used and prevention of complications;

(D) observing and reporting patient reactions to treatment;

and

(F) information to report and record.

(d) The instructor shall maintain a roster of attendance for each training class.

(e) The instructor shall evaluate each trainee weekly during the training program to determine the trainee's progress.

(f) The facility shall administer a written examination encompassing the required content. The dialysis technician trainee shall pass the exam with a score of at least 80 percent before the trainee's release from orientation.

(1) The examination shall encompass the content required in subsection (b) of this section.

(2) When the dialysis technician trainee cannulates access, administers medications, initiates or discontinues dialysis via a central venous catheter, or manipulates a central venous catheter, the examination shall encompass the content required in subsection (c) of this section.

(3) Other than the first examination for a specific responsibility in a facility, current certification as a dialysis technician by a nationally recognized testing organization may be substituted for the written examination.

(g) An instructor for the course to train an individual as a dialysis technician shall be:

(1) a physician who qualifies as a medical director;

(2) a registered nurse with at least 12 months of experience in hemodialysis obtained within the last 24 months and a current competency skills checklist on file in the facility, or a registered nurse instructor of a dialysis technician training course of an accredited college or university;

(3) a qualified dietitian or social worker providing training only within the individual's area of expertise; or

(4) a technician with at least 12 months experience, qualified by training and experience in water treatment, dialysate preparation, reprocessing, or other technical aspects of dialysis providing training only within their area of expertise.

(h) Licensed nurses and patient care technicians who have at least one year of experience in hemodialysis and a current competency skills checklist on file in the facility may assist in didactic sessions and serve as preceptors.

(i) For an individual with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required. Training programs for dialysis technician trainees who have previous direct patient care experience may be shortened if they demonstrate competency with the required knowledge and skills but may not be less than a total of 80 clock hours of combined classroom education and clinical training.

#### §507.73. Competency Evaluation.

(a) The governing body shall ensure the facility's core staff members review the training records of each trainee, including tests and skills checklists, hear comments from the training instructors and preceptors, and validate that the trainee has successfully completed the training program and is competent to perform their job duties and tasks.

(b) An individual who completes the facility's orientation and training program and the facility determines is qualified to deliver dialysis patient care may qualify as a dialysis technician by passing the written examination described in §507.72(f) of this subchapter (relating to Training Curricula and Instructors) and demonstrating competency by completing the skills checklist described in subsection (c) of this section.

(c) The supervising nurse or a registered nurse who qualifies as an instructor under §507.72(g)(2) of this subchapter shall complete a competency skills checklist to document each dialysis technician trainee's knowledge and skills for:

- (1) assembling necessary supplies;
- (2) preparing dialysate according to procedure and dialysis prescription;
- (3) assembling and preparing the dialysis extracorporeal circuit correctly;
- (4) securing the correct dialyzer for the specific patient;
- (5) installing and rinsing dialyzer and all necessary tubing;
- (6) testing monitors and alarms, conductivity, and presence and absence of residual sterilants, if applicable;
- (7) setting monitors and alarms according to facility and manufacturer protocols;
- (8) obtaining pre-dialysis evaluation to include vital signs, weight, and temperature according to facility protocol and informing the registered nurse of unusual findings;
- (9) inspecting access for patency and, after cannulation is performed and heparin administered, initiating dialysis according to the

patient's prescription, observing universal precautions, and reporting unusual findings to the registered nurse;

(10) adjusting blood flow rates according to established protocols and the patient's prescription;

(11) calculating and setting the dialysis machine to allow fluid removal rates according to established protocols and the patient's prescription;

(12) monitoring the patient and equipment during treatment, responding appropriately to patient needs and machine alarms, and reporting unusual occurrences to the registered nurse;

(13) changing fluid removal rate, placing patient in Trendelenburg position, and administering replacement normal saline as directed by the registered nurse, physician order, or facility protocol;

(14) documenting findings and actions per facility protocol;

(15) describing appropriate response to dialysis-related emergencies such as cardiac or respiratory arrest, needle displacement or infiltration, clotting, blood leaks, or air emboli, and nonmedical emergencies such as power outages or equipment failure;

(16) discontinuing dialysis and establishing hemostasis by:

(A) inspecting, cleaning, and dressing access according to facility protocol; and

(B) reporting unusual findings and occurrences to the registered nurse;

(17) obtaining and recording post-dialysis vital signs, temperature, and weight and reporting unusual findings to the registered nurse;

(18) discarding supplies and sanitizing equipment and treatment chair according to facility protocol;

(19) communicating the patient's emotional, medical, psychological, and nutritional concerns to the registered nurse;

(20) maintaining current certification in cardiopulmonary resuscitation; and

(21) maintaining professional conduct, good communication skills, and confidentiality in the care of patients.

(d) For dialysis technician trainees who will be assisting with training or treatment of peritoneal dialysis patients, each trainee shall satisfactorily:

- (1) assist patients in ordering supplies;
- (2) make a dialysate exchange (draining and refilling the peritoneal space with dialysate) to include continuous ambulatory peritoneal dialysis exchange procedures, and initiation or discontinuation of continuous cycling peritoneal dialysis;
- (3) observe peritoneal effluent;
- (4) know what observations to report;
- (5) collect dialysate specimen; and
- (6) set up and operating continuous cycling peritoneal dialysis equipment.

(e) For dialysis technician trainees who will be cannulating dialysis access and administering heparin, normal saline, lidocaine, or oxygen, each trainee shall satisfactorily:

- (1) cannulate to include:

- (A) inspecting the access for patency;
- (B) preparing the skin;
- (C) using aseptic technique;
- (D) placing needles correctly;
- (E) establishing blood access;
- (F) replacing needles;
- (G) knowing when to call for assistance;
- (H) securing needles; and
- (I) removing needles;

(2) administer heparin or other prescribed anticoagulants to include:

- (A) checking the patient's individual prescription;
- (B) preparing the dose;
- (C) labeling the prepared syringe;
- (D) administering the dose; and
- (E) observing for complications;

(3) administer normal saline to include:

- (A) understanding unit protocol;
- (B) checking the patient's prescription;
- (C) recognizing signs of hypotension;
- (D) notifying the registered nurse;
- (E) administering normal saline; and
- (F) rechecking vital signs;

(4) administer lidocaine and other anesthetics to include:

- (A) checking the patient's prescription;
- (B) identifying the correct medication;
- (C) preparing the dose;
- (D) administering the dose; and
- (E) observing for complications; and

(5) administer oxygen to include:

- (A) verifying the ordered flow rate from the nurse functioning in the charge role;
- (B) setting up the equipment; and
- (C) connecting the tubing for the patient.

(f) For dialysis technician trainees who will be initiating or discontinuing dialysis via a central venous catheter or manipulating a central venous catheter, each trainee shall satisfactorily:

- (1) use aseptic technique;
- (2) establish blood access;
- (3) observe for complications;
- (4) document findings and actions per facility protocol;
- (5) know when to call for assistance and reporting unusual findings and occurrences to the registered nurse; and
- (6) administer heparin or other prescribed anticoagulants to include:

- (A) checking the patient's individual prescription;
- (B) preparing the dose;
- (C) labeling the prepared syringe;
- (D) administering the dose; and
- (E) observing for complications.

(g) If a dialysis technician is to cannulate a dialysis access, initiate or discontinue dialysis via a central venous catheter, manipulate a central venous catheter, administer normal saline, heparin, lidocaine or other anesthetics, or oxygen, the medical director shall verify and document the dialysis technician's competency to perform these tasks and delegate authority to the technician in accordance with Texas Occupations Code Chapter 157 (relating to Authority of Physician to Delegate Certain Medical Acts).

#### §507.74. Documentation of Competency.

(a) A facility's training program shall provide a certification or verification document to the dialysis technician trainee, documenting their successful completion of the training program and competency evaluation. This document shall indicate that the training program the trainee completed meets the requirements of this subchapter.

(b) Another facility that may later employ the dialysis technician may accept the document described in subsection (a) of this section. Each employing facility shall have each newly hired experienced dialysis technician complete a written test and competency checklist in accordance with §507.73(c) - (e) of this subchapter (relating to Competency Evaluation) within a minimum 80 work hours after hire.

#### §507.75. Prohibited Acts.

The facility shall ensure a dialysis technician does not:

- (1) initiate patient education;
- (2) alter ordered treatment, including shortening the treatment time;
- (3) change central venous catheter dressings;
- (4) administer any medications other than normal saline, heparin or other prescribed anticoagulants, lidocaine or other anesthetics, or oxygen, which may only be administered during a routine dialysis treatment;
- (5) administer blood or blood products;
- (6) perform nonaccess site arterial puncture;
- (7) accept physician orders;
- (8) provide hemodialysis treatment to pediatric patients under the age of 18 who weigh less than 35 kilograms; or
- (9) alter the level of electrolytes in dialysate through use of additives ("spiking").

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

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



## SUBCHAPTER F. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT

### 26 TAC §§507.81 - 507.93

#### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §524.0005, 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 Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The new rules implement Texas Government Code §524.0005 and Texas Health and Safety Code Chapter 251.

#### §507.81. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission (HHSC) inspection and investigation process, an end stage renal disease (ESRD) facility:

(1) may not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients that the facility staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; or

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of facility staff when HHSC has requested a private room or office or distanced themselves from facility staff unless the facility first informs HHSC and the facility obtains written approval from HHSC before beginning to record or listen to the discussion.

(b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits facility staff to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

#### §507.82. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an inspection of each end stage renal disease (ESRD) facility prior to the issuance or renewal of a license.

(1) A facility is not subject to additional annual licensing inspections subsequent to the issuance of the initial license while the facility maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code §§1395 et seq.; or

(B) accreditation from a national accreditation organization for the offered services.

(2) HHSC may conduct an inspection of a facility exempt from an annual licensing inspection under paragraph (1) of this subsection before issuing a renewal license to the facility if the certification or accreditation body has not conducted an on-site inspection of the

facility in the preceding three years and HHSC determines that an inspection of the facility by the certification or accreditation body is not scheduled within 60 days of the license expiration date.

(b) HHSC may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(d) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or licensed station numbers;

(3) routine inspections, which may be conducted without notice and at HHSC discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(e) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, video surveillance, and other documents and information maintained by or on behalf of the facility, unless prohibited by law.

(f) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(g) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the

facility representative of any preliminary findings of the inspection, including possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

(k) HHSC maintains the confidentiality of facility records as applicable under state or federal law.

§507.83. Complaint Investigations.

(a) A facility shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations may be coordinated with the federal Centers for Medicare & Medicaid Services and its agents responsible for the inspection of ESRD facilities to determine compliance with the Conditions of Participation under Title XVIII of the Social Security Act, (42 United States Code, §§1395 et seq.), to avoid duplicate investigations.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, video surveillance, and other documents and informa-

tion maintained by, or on behalf of, the facility, unless prohibited by law.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) The HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference.

(l) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

(m) HHSC maintains the confidentiality of facility records as applicable under state or federal law.

(n) HHSC notifies complainants regarding the investigation's outcome within 10 business days after completing the investigation.

§507.84. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the facility shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If HHSC does not accept the POC, HHSC notifies the facility in writing and requests the facility submit to HHSC a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the facility in writing.

(C) The facility shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a facility's compliance with this subsection or HHSC acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§507.85. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct

of a licensed professional, intern, or applicant for professional licensure.

§507.86. Complaint Against an HHSC Representative.

A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

§507.87. Corrective Action Plan.

(a) The medical review board (MRB) may assist the Texas Health and Human Services Commission (HHSC) in determining the corrective action required when the results of an inspection or an annual report indicate significant problems potentially impacting patient outcomes exist. At the conclusion of an on-site inspection, HHSC may refer an end stage renal disease facility to the MRB if the results of the inspection present concerns related to patient outcomes. These facilities may be requested to provide additional information, or may be subject to an on-site inspection, corrective action plan, or enforcement action.

(b) A corrective action plan may be used in accordance with Texas Health and Safety Code §251.061 (relating to Corrective Action Plan).

(1) HHSC may use a corrective action plan as an alternative to enforcement action under Texas Health and Safety Code §251.061.

(2) Before taking enforcement action, HHSC considers whether the use of a corrective action plan is appropriate. In determining whether to use a corrective action plan, HHSC considers whether:

(A) the facility has violated Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities), or this chapter, and the violation has resulted in an adverse patient result;

(B) the facility has a previous history of lack of compliance with the statute, this chapter, or a previously executed corrective action plan; or

(C) the facility fails to agree to a corrective action plan.

(c) HHSC may use a level one, level two, or level three corrective action plan, as determined by HHSC in accordance with this subsection, after inspection of the facility.

(1) A level one corrective action plan is appropriate if HHSC finds the facility is not in compliance with Texas Health and Safety Code Chapter 251 or this chapter, but the circumstances are not serious or life-threatening. HHSC or a monitor may supervise the implementation of the plan.

(2) A level two corrective action plan is appropriate if HHSC finds the facility is not in compliance with Texas Health and Safety Code Chapter 251 or this chapter and the circumstances are potentially serious or life-threatening, or if HHSC finds that the facility failed to implement or comply with a level one corrective action plan. HHSC or a monitor shall supervise the implementation of the plan. Supervision of the plan's implementation may include on-site supervision, observation, and direction. The facility is expected to comply with all HHSC requests, including supervision, observation, and direction, as requested by HHSC.

(3) A level three corrective action plan is appropriate if HHSC finds that the facility is not in compliance with Texas Health and Safety Code Chapter 251 or this chapter and the circumstances are serious or life-threatening, or if HHSC finds that the facility failed to comply with a level two corrective action plan or cooperate with HHSC in connection with that plan. HHSC may require the appointment of

a monitor to supervise the implementation of the plan, appointment of a temporary manager, or appointment of a monitor and temporary manager. Appointment of a temporary manager by agreement shall be in accordance with §507.88 of this subchapter (relating to Voluntary Appointment of a Temporary Manager). Involuntary appointment of a temporary manager shall be in accordance with §507.89 of this subchapter (relating to Involuntary Appointment of a Temporary Manager).

(4) A corrective action plan is not confidential. Information contained in the plan may be exempted from required disclosure under Texas Government Code Chapter 552 (relating to Public Information) or other applicable law.

(5) HHSC approves the monitor for a corrective action plan. The monitor shall be an individual or team of individuals and may include a professional with end stage renal disease experience or a MRB member.

(A) The monitor shall not be a current employee or former employee within the past two years of the dialysis organization or an affiliated facility.

(B) The monitor's purpose is to observe, supervise, consult, and educate the facility and the facility's employees under a corrective action plan and bring the facility into substantial compliance with the regulations of this chapter and all other state and federal laws and regulations in as short a time as practicable.

(C) The monitor shall report their findings no less than once a month to facility management, administrators, and HHSC to report goals and accomplishments and set forth further improvements needed in the facility. Monitors shall reduce their time spent in the facility to allow staff to practice what they have learned, to the point that continued monitoring is no longer necessary nor desired.

(D) HHSC may conduct an on-site inspection to determine the facility's progress under the monitor's direction. HHSC staff inspects monitored facilities within six months after imposing a facility monitor to determine whether the facility must maintain the corrective action plan under which the monitor was placed.

(E) The facility shall pay the cost of the monitor.

(F) A facility shall not use a monitor who is currently acting as a full-time monitor for another facility under a corrective action plan.

(G) A facility shall select a monitor and submit the monitor's resume for HHSC approval of the monitor. Once the facility selects and HHSC approves a monitor, the facility shall ensure only the approved monitor is used. The facility shall not allow a subcontractor to take the place of the approved monitor.

§507.88. Voluntary Appointment of a Temporary Manager.

(a) A person holding a controlling interest in a facility may, at any time, request the Texas Health and Human Services Commission (HHSC) to assume the facility's management by appointing a temporary manager in accordance with Texas Health and Safety Code §251.091 (relating to Appointment by Agreement).

(b) After receiving the request, HHSC may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties, if HHSC considers the appointment desirable.

(c) An agreement under this section shall:

(1) specify all terms and conditions of the temporary manager's appointment and authority; and



(2) preserve all rights of individuals served by the facility granted by law.

(d) The temporary manager's primary duty is to ensure adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

§507.89. Involuntary Appointment of a Temporary Manager.

(a) Under Texas Health and Safety Code §251.092 (relating to Involuntary Appointment), the Texas Health and Human Services Commission (HHSC) may request the attorney general to bring an action in the name and on behalf of the state to appoint a temporary manager to manage a facility if:

(1) the facility is operating without a license;

(2) HHSC has denied, suspended, or revoked the facility's license but the facility continues to operate;

(3) license denial, suspension, or revocation proceedings against the facility are pending, and HHSC determines that an imminent or reasonably foreseeable threat to the health and safety of a facility's patient exists;

(4) HHSC determines that an emergency exists that presents an immediate threat to the facility's patient's health and safety;

(5) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(6) HHSC determines a level three corrective action plan, under §507.87(c)(3) of this subchapter (relating to Corrective Action Plan) that includes appointment of an involuntary temporary manager, is necessary to address serious or life-threatening conditions at the facility.

(b) After a hearing under Texas Health and Safety Code §251.092, a court appoints a temporary manager to manage a facility, if the court finds appointing the manager is necessary.

(1) The court order addresses the temporary manager's duties and authority, which may include facility management and providing dialysis services to facility patients until specified circumstances occur, such as new facility ownership, compliance with the statute or this chapter, or facility closure.

(2) If possible, the court appoints as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(3) The venue for an action under this section is in Travis County.

(c) A temporary manager appointed under this section is entitled to a reasonable fee, as determined by the court in accordance with Texas Health and Safety Code §251.093 (relating to Fee; Release of Funds).

(1) The facility shall pay the fee.

(2) The temporary manager may petition the court to order the release of any payment owed to the manager for care and services provided to facility patients if the facility withholds payment.

(3) Withheld payments that may be released may include payments withheld by a governmental agency or other entity before or during the temporary manager's appointment, including:

(A) Medicaid, Medicare, or insurance payments; or

(B) payments from another third party.

§507.90. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, or orders.

(b) HHSC has jurisdiction to enforce violations of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of Texas Health and Safety Code, including Chapter 251;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the facility, or any of its employees, committing an act that causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially altering any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the executive commissioner or another enforcement procedure under Texas Health and Safety Code Chapter 251;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights that reflects more than nominal noncompliance;

(9) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents a facility is required to submit to HHSC or required to maintain pursuant to Texas Health and Safety Code Chapter 251, and the provisions of this chapter;

(11) failure to comply with other state and federal laws affecting the health, safety, and rights of facility patients;

(12) failure to timely pay an assessed administrative penalty as required by HHSC;

(13) failure to submit an acceptable plan of correction (POC) for cited deficiencies within the timeframe required by HHSC;

(14) failure to timely implement a POC for deficiencies cited by HHSC within the dates designated in the POC;

(15) failure to comply with applicable requirements within a designated probation period; or

(16) if the facility is participating under Title XVIII, and the CMS terminates the facility's Medicare provider agreement.

(c) HHSC has jurisdiction to enforce violations of Texas Health and Safety Code Chapter 251 and this chapter. HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information or fees required by HHSC that is directly related to the application;

(2) has had the following actions taken against the applicant within the two-year period preceding the application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal or state tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as an end stage renal disease (ESRD) facility or health care facility in any state;

(F) unresolved federal Medicare or state Medicaid audit exceptions;

(G) denial, suspension, or revocation of an ESRD facility license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(H) a court injunction prohibiting ownership or operation of an ESRD facility.

(d) HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC applies the requirements of Texas Occupations Code Chapter 53 (relating to Consequences of Criminal Conviction).

(1) In determining whether a criminal conviction directly relates, HHSC considers the provisions of Texas Occupations Code §53.022 (relating to Factors in Determining Whether Conviction Directly Relates to Occupation) and Texas Occupations Code §53.023 (relating to Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation).

(2) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensed facility because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(A) a misdemeanor violation of Texas Health and Safety Code Chapter 251;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any health-related profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under Texas Penal Code (TPC) Title 5 (relating to Offenses Against the Person), involving a patient, resident, or client of any health care facility, a home and community support services agency, or a health care professional; or

(G) a misdemeanor or felony under TPC:

(i) Title 4 (relating to Inchoate Offenses);

(ii) Title 5;

(iii) Title 7 (relating to Offenses Against Property);

(iv) Title 8 (relating to Offenses Against Public Administration);

(v) Title 9 (relating to Offenses Against Public Order and Decency);

(vi) Title 10 (relating to Offenses Against Public Health, Safety, and Morals); or

(vii) Title 11 (relating to Organized Crime).

(H) Offenses listed in this paragraph are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign, or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate a facility.

(3) HHSC revokes a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(e) If HHSC proposes to deny, suspend, or revoke a license, HHSC sends a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, states the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and states that the applicant or license holder has an opportunity for a hearing before taking the action.

(1) The facility must request a hearing within 30 calendar days after receipt of the notice. Receipt of the notice is presumed to occur on the third business day after the notice is mailed by HHSC to the applicant's or licensee's last known address.

(2) The request for a hearing shall be in writing and submitted to the Texas Health and Human Services Commission, Enforcement Unit, Regulatory Services Division.

(3) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 (relating to Administrative Procedure) and Texas Administrative Code, Title 1 Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) If the facility does not request a hearing in writing within 30 calendar days after receiving the notice, the facility is deemed to have waived the opportunity for hearing, and the proposed action shall be taken.

(5) If the facility fails to appear or be represented at the scheduled hearing, the facility has waived the right to a hearing, and the proposed action shall be taken.

(f) If HHSC suspends a license, the suspension shall remain in effect until HHSC determines that the reason for suspension no longer exists. An authorized representative of HHSC investigates before making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to HHSC.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, HHSC may not renew the license until HHSC determines that the reason for suspension no longer exists.

(g) If HHSC revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(h) Upon revocation or nonrenewal, a license holder shall return the license to HHSC within 30 calendar days after notification from HHSC.

(i) In lieu of denying, suspending, or revoking the license, HHSC may place the facility on probation for a period of not less than 30 calendar days if the facility is found in repeated noncompliance and the facility's noncompliance does not endanger the public's health and safety.

(1) HHSC provides the facility notice of probation and the items of noncompliance at least 10 calendar days before the probation period begins.

(2) During the probation period, the facility must correct the items of noncompliance and report corrections to HHSC for approval.

§507.91. Emergency Orders.

The Texas Health and Human Services Commission (HHSC) may issue an emergency order to suspend a license issued under this chapter, if HHSC has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(1) An emergency suspension is effective immediately without a hearing or notice to the license holder.

(2) On the license holder's written request, HHSC refers the matter to the State Office of Administrative Hearings and an administrative law judge of that office is required to conduct a hearing, not earlier than the 10th day or later than the 30th day after the date the hearing request is received, to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by HHSC rules for a contested case hearing and Texas Government Code Chapter 2001 (relating to Administrative Procedure).

§507.92. Administrative Penalties.

(a) The Texas Health and Human Services Commission (HHSC) may assess an administrative penalty against a person who violates Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) or this chapter, under:

(1) Texas Health and Safety Code (HSC) §251.066 (relating to Administrative Penalty),

(2) HSC §251.067 (relating to Report Recommending Administrative Penalty),

(3) HSC §251.068 (relating to Hearing; Order),

(4) HSC §251.069 (relating to Notice and Payment of Administrative Penalty; Judicial Review; Refund),

(5) HSC §251.070 (relating to Penalty Deposited to State Treasury), and

(6) HSC §251.071 (relating to Recovery of Costs).

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, HHSC considers:

(1) the violation's seriousness;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty are subject to Texas Government Code Chapter 2001 (relating to Administrative Procedure).

(e) If after investigation of a possible violation and the facts surrounding that possible violation, HHSC determines that a violation has occurred, HHSC gives written notice of the violation to the person alleged to have committed the violation. The notice will include:

(1) the alleged violation's summary;

(2) a statement of the proposed penalty amount, based on the factors listed in subsection (c) of this section; and

(3) a statement of the person's right to a hearing on the violation's occurrence, the penalty amount, or both the violation's occurrence and the penalty amount.

(f) Within 20 calendar days after receiving the notice, the person notified may accept the determination of HHSC made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(g) If the person notified of the violation accepts the determination of HHSC, the executive commissioner issues an order approving the determination and ordering that the person pay the recommended penalty.

(h) If the person notified fails to respond in a timely manner to the notice or if the person requests a hearing, the executive commissioner's designee:

(1) refers the matter to the State Office of Administrative Hearings for an administrative law judge of that office to conduct a hearing; and

(2) gives written notice of the hearing to the person.

(i) At the hearing, the administrative law judge makes findings of fact and conclusions of law and promptly issues the executive commissioner a decision proposal regarding the violation's occurrence and the recommended proposed penalty amount, if the judge determines a penalty is warranted.

(j) Based on the findings of fact and conclusions of law and the administrative law judge's recommendation, the executive commissioner by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred. The executive commissioner or the executive commissioner's designee gives notice of the executive commissioner's order to the person notified. The notice includes:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement regarding the person's right to judicial review of the executive commissioner's order.

(k) Within 30 calendar days after the date the decision is final, the person shall:

(1) pay the penalty in full;

(2) pay the penalty amount and file a petition for judicial review contesting the violation's occurrence, the penalty amount, or both the violation's occurrence and the penalty amount; or

(3) without paying the penalty amount, file a petition for judicial review contesting the violation's occurrence, the penalty amount, or both the violation's occurrence and the penalty amount. Within the 30-day period, a person who acts under this paragraph may:

(A) stay the penalty's enforcement by:

(i) paying the penalty amount to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the penalty amount and that is effective until all judicial review of the executive commissioner's order is final; or

(B) request the court to stay the penalty's enforcement by:

(i) filing with the court a person's affidavit stating that the person is financially unable to pay the penalty amount and give the supersedeas bond; and

(ii) giving a copy of the affidavit to HHSC by certified mail.

(l) If HHSC receives a copy of an affidavit under subsection (k)(3)(B) of this section, HHSC may file with the court, within five calendar days after the date the copy is received, a contest to the affidavit.

#### §507.93. Recovery of Costs.

(a) The Texas Health and Human Services Commission (HHSC) may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked, or if administrative penalties are assessed against the person.

(b) The person shall pay expenses and costs assessed under this section within 30 calendar days after the date of an order requiring the payment of expenses and costs is final.

(c) HHSC may refer the matter to the attorney general for collection of the expenses and costs.

(d) If the attorney general brings an action against a person under Texas Health and Safety Code §251.063 (relating to Injunction) or §251.065 (relating to Civil Penalty), or to enforce an administrative penalty assessed, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and HHSC, reasonable expenses and costs.

(e) For purposes of this section, "reasonable expenses and costs" include expenses incurred by HHSC and the attorney general in the investigation, initiation, or prosecution of any actions, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

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 May 21, 2025.

TRD-202501780

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

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



## CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §511.2, concerning Definitions; and §511.12, concerning Application and Issuance of Initial License; and proposes new §511.79, concerning Workplace Violence Prevention.

## BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023. S.B. 240 added new Texas Health and Safety Code (THSC) Chapter 331 which requires certain facilities, including limited services rural hospitals, to establish a workplace violence prevention committee or authorize an existing facility committee to develop the workplace violence prevention plan. THSC Chapter 331 also requires facilities to adopt, implement, and enforce a written workplace violence prevention policy and plan and to respond to workplace violence incidents.

The proposal requires a hospital to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital. The proposal specifies the required membership for the required committee and requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the hospital's governing body. The proposal requires each hospital to make a copy of the hospital's workplace violence prevention plan available to each hospital health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public. The proposal establishes minimum requirements for a hospital to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

THSC §331.006 permits HHSC to take disciplinary action against a provider that violates THSC Chapter 331 on or after September 1, 2023, as if the provider violated an applicable licensing law.

Additionally, HHSC is updating LSRH rules to add in a definition of the term "facility" to the chapter and to correct a cross reference for the qualified rural hospital definition.

## SECTION-BY-SECTION SUMMARY

The proposed amendment to §511.2, Definitions, defines the term "facility" throughout Chapter 511.

The proposed amendment to §511.12(a), Application and Issuance of Initial License, corrects a reference for the qualified rural hospital definition.

Proposed new §511.79, Workplace Violence Prevention, outlines the requirements for the workplace violence prevention plan; outlines membership requirements for an advisory committee; and establishes requirements for workplace violence prevention policy and plan.

## FISCAL NOTE

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

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that promote a safe and secure environment for hospital healthcare providers and employees.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not require persons subject to the rules to alter their current business practices as these entities are required to comply with the law as added by S.B. 240. The new section only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of

the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R092" in the subject line.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §511.2

#### STATUTORY AUTHORITY

The amendment is authorized by 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; THSC §241.302, which provides that the executive commissioner of HHSC shall adopt rules to establish minimum standards for limited services rural hospitals; and THSC Chapter 331, which requires licensed hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The amendment implements Texas Government Code §524.0151 and THSC Chapters 241 and 331.

#### §511.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

(1) Act--The Texas Hospital Licensing Law, Texas Health and Safety Code (HSC)[~~2~~] Chapter 241.

(2) Actual harm--A negative outcome that compromises a patient's physical, mental, or emotional well-being.

(3) Advance directive--A directive, as that term is defined by HSC §166.031 (relating to Definitions), an out-of-hospital do not resuscitate (DNR) order as that term is defined by HSC §166.081 (relating to Definitions), or a medical power of attorney under HSC Chapter 166, Subchapter D (relating to Medical Power of Attorney).

(4) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(5) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(6) Applicant--A person who seeks a limited services rural hospital (LSRH) license from the Texas Health and Human Services Commission (HHSC) and is legally responsible for the operation of the LSRH, whether by lease or ownership.

(7) Attending physician--A physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(8) Available--When referring to on-site personnel, on the premises and able to rapidly perform hands-on care in an emergency situation.

(9) Biological indicators--Commercially available microorganisms (e.g., United States Food and Drug Administration approved strips or vials of *Bacillus* species endospores).

(10) Cardiopulmonary resuscitation--Any medical intervention used to restore circulatory or respiratory function that has ceased.

(11) Chemical dependency services--A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(12) Competent--Possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(13) Comprehensive medical rehabilitation--The provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share responsibility to achieve team treatment goals for the person.

(14) Contaminated linen--Linen that has been soiled with blood or other potentially infectious materials or may contain sharps.

(15) Dentist--A person licensed to practice dentistry by the Texas State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

(16) Dietitian--A person who is currently licensed by the Texas Department of Licensing and Regulation as a licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with the Academy of Nutrition and Dietetics.

(17) Do not resuscitate (DNR) order--An order issued under HSC Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

(18) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in one or all of the following:

(A) placing the health of the individual (or with respect to a pregnant individual, the health of the pregnant individual or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) with respect to a pregnant individual who is having contractions:

(i) that there is inadequate time to safely transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the pregnant individual or the unborn child.

(19) Facility--A limited services rural hospital as defined at paragraph (29) of this section unless context clearly indicates otherwise.

(20) [(19)] General hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities, including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(21) [(20)] Governing body--The governing authority of an LSRH that is responsible for the LSRH's organization, management, control, and operation, including appointment of medical staff. This term includes the owner or partners for an LSRH owned or operated by an individual or partners.

(22) [(21)] Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(23) [(22)] Incompetent--Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(24) [(23)] Inpatient--An individual admitted to a facility for an intended length of stay of 24 hours or greater.

(25) [(24)] Inpatient services--Services provided to an individual admitted to an LSRH for an intended length of stay of 24 hours or greater.

(26) [(25)] Legally authorized representative (LAR)--A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(27) [(26)] Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state.

(28) [(27)] Licensee--The person or governmental unit named in the application for issuance of an LSRH license.

(29) [(28)] Limited services rural hospital (LSRH)--A general or special hospital that is or was licensed under HSC Chapter 241 and that:

(A) is:

(i) located in a rural area, as defined by:

(I) Texas Health and Human Services Commission rule; or

(II) 42 United States Code (U.S.C.) Section 1395ww(d)(2)(D); or

(ii) designated by the Centers for Medicare & Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(B) otherwise meets the requirements to be designated as to be designated as a rural emergency hospital under Code of Federal Regulations Title 42 (42 CFR) Part 485, Subpart E.

(30) [(29)] Limited services rural hospital (LSRH) administration--Administrative body of an LSRH headed by an individual who has the authority to represent the LSRH and who is responsible for the operation of the LSRH according to the policies and procedures of the LSRH's governing body.

(31) [(30)] Medical staff--A physician or group of physicians and a podiatrist or group of podiatrists who by action of the governing body of an LSRH are privileged to work in and use the facilities of an LSRH for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(32) [(31)] Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental illness.

(33) [(32)] Nurse--A registered, vocational, or advanced practice registered nurse licensed by the Texas Board of Nursing or entitled to practice in this state under Texas Occupations Code Title 3, Subtitle E.

(34) [(33)] Other potentially infectious materials--Any of the following materials.

(A) The following human body fluids:

- (i) semen;
- (ii) vaginal secretions;
- (iii) cerebrospinal fluid;
- (iv) synovial fluid;
- (v) pleural fluid;
- (vi) pericardial fluid;
- (vii) peritoneal fluid;
- (viii) amniotic fluid;
- (ix) saliva in dental procedures;
- (x) any body fluid that is visibly contaminated with blood; and

(xi) all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); or

(C) human immunodeficiency virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or hepatitis B virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(35) [(34)] Outpatient--An individual who presents for diagnostic or treatment services for an intended length of stay of less than 24 hours. An individual who requires continued observation may be considered as an outpatient for up to 48 hours.

(36) [(35)] Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the LSRH. Services that require continued observation may be considered as outpatient services for up to 48 hours.

(37) [(36)] Owner--One of the following persons or governmental unit which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(38) [(37)] Patient--An individual who presents for diagnosis or treatment.

(39) [(38)] Person--An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(40) [(39)] Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the state of Texas.

(41) [(40)] Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(42) [(41)] Podiatrist--A podiatrist licensed by the Texas Department of Licensing and Regulation.

(43) [(42)] Practitioner--A health care professional licensed in the state of Texas, other than a physician, podiatrist, or dentist.

(44) [(43)] Prelicensure conference--A conference held with HHSC staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation prior to the on-site licensure inspection.

(45) [(44)] Premises--A building where patients receive LSRH services.

(46) [(45)] Prominent location--A size and font at least as large as that of surrounding text, links, or buttons, distinct from the background of the website, immediately viewable upon accessing the home page of the hospital's publicly accessible website without having to scroll.

(47) [(46)] Prominently displayed--Refer to "prominent location."

(48) [(47)] Public health emergency--A state of disaster or local disaster declared under Texas Government Code Chapter 418 or a public health disaster as defined by HSC §81.003.

(49) [(48)] Qualified rural hospital--A general or special hospital licensed under HSC Chapter 241 (relating to Hospitals) on December 27, 2020, that meets the requirements to be designated as a rural emergency hospital under 42 CFR §485.502 (relating to Definitions),

and §485.506 (relating to Designation and Certification of REHs) and is:

(A) located in a rural area, as defined by 42 U.S.C. [United States Code] §1395ww(d)(2)(D); or

(B) designated by the Centers for Medicare & Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(50) [(49)] Qualifying official disaster order--An order, proclamation, or other instrument issued by the Governor, another official of this state, or the governing body or an official of a political subdivision of this state declaring a disaster that has infectious disease as the basis for the declared disaster.

(51) [(50)] Qualifying period of disaster--The period of time the area in which a LSRH is located is declared to be a disaster area by a qualifying official disaster order.

(52) [(51)] Quality improvement--A method of evaluating and improving processes of patient care that emphasizes a multidisciplinary approach to problem solving, and focuses not on individuals, but systems of patient care which might be the cause of variations.

(53) [(52)] Quality improvement organization--An organization that has a contract with the Centers for Medicare & Medicaid Services, under Title XI Part B of the Social Security Act, to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare beneficiaries.

(54) [(53)] Religious counselor--An individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

(55) [(54)] Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing as a registered nurse or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(56) [(55)] Restraint--A restraint is:

(A) any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely; or

(B) a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition and does not include:

(i) devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests; or

(ii) devices to protect the patient from falling out of bed, off of a stretcher, or out of a chair, or to permit the patient to participate in activities without the risk of physical harm (this does not include a physical escort).

(57) [(56)] Seclusion--The involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving.

(58) [(57)] Special hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(59) [(58)] Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(60) [(59)] Surgical technologist--A person who practices surgical technology as defined in HSC Chapter 259.

(61) [(60)] Telemedicine--A health care service that is initiated by a physician or provided by a licensed health professional acting under appropriate physician delegation and supervision that is provided for purposes of client assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(62) [(61)] Transfer--The movement (including the discharge) of an individual outside an LSRH's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the LSRH, but does not include such a movement of an individual who has been declared dead, or leaves the facility without the permission of any such person.

(63) [(62)] Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of Health and Human Services. This term includes standard precautions as defined by the CDC that are designed to reduce the risk of transmission of blood borne and other pathogens in hospitals.

(64) [(63)] Violation--Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the HHSC executive commissioner (executive commissioner) or the executive commissioner's designee, adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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 May 21, 2025.  
TRD-202501738





## SUBCHAPTER B. LICENSING REQUIREMENTS

### 26 TAC §511.12

#### STATUTORY AUTHORITY

The amendment is authorized by 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; THSC §241.302, which provides that the executive commissioner of HHSC shall adopt rules to establish minimum standards for limited services rural hospitals; and THSC Chapter 331, which requires licensed hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The amendment implements Texas Government Code §524.0151 and THSC Chapters 241 and 331.

#### *§511.12. Application and Issuance of Initial License.*

(a) An applicant who meets the definition of a qualified rural hospital under §511.2(49) [~~§511.2(47)~~] of this chapter (relating to Definitions) and is seeking a limited services rural hospital (LSRH) license shall submit the following documents to the Texas Health and Human Services Commission (HHSC) within 60 calendar days before the projected opening date of the LSRH:

- (1) an accurate and complete application form;
- (2) a copy of the LSRH's patient transfer policy, developed in accordance with §511.65 of this chapter (relating to Patient Transfer Policy) and signed by both the chairman and secretary of the LSRH's governing body attesting to the date the governing body adopted the policy and the policy's effective date;
- (3) a copy of the LSRH's memorandum of transfer form that contains at least the information described in §511.65 of this chapter;
- (4) a copy of a patient transfer agreement entered into between the LSRH and at least one hospital certified by the Centers for Medicare & Medicaid Services that is designated as a level I or level II trauma center in accordance with §511.66 of this chapter (relating to Patient Transfer Agreements);
- (5) a copy of a fire inspection approved by an individual certified by the Texas Commission on Fire Protection that is dated no earlier than one year before the application submission date; and
- (6) the appropriate license fee as required in §511.17 of this subchapter (relating to Fees).

(b) In addition to the document submittal requirements in subsection (a) of this section, the applicant must complete the following before HHSC will issue an LSRH license.

(1) When HHSC requires an architectural inspection, per HHSC instructions, submit written approval from HHSC confirming compliance with Subchapters F and G of this chapter (relating to Fire

Prevention and Safety and Physical Plant and Construction Requirements, respectively).

(A) HHSC requires an architectural inspection when a qualifying rural hospital that has closed subsequently applies for an LSRH license.

(B) A hospital applying for an LSRH license after being closed for 90 days or fewer shall inform HHSC of the entity maintaining the facility during the closure period, if any, and provide maintenance and facility condition documentation, such as logbooks and photographs. HHSC may waive the architectural inspection if HHSC determines the documentation indicates an acceptable maintenance history and facility condition.

(C) HHSC may waive the architectural inspection for a currently operating qualifying rural hospital that applies for an LSRH license.

(2) If the applicant intends to add on any new services as an LSRH that the applicant did not offer while licensed as a general or special hospital, the applicant must comply with Subchapter G of this chapter as applicable.

(3) The applicant or the applicant's representative shall attend a preclosure conference conducted by HHSC. HHSC may waive the preclosure conference requirement at its discretion.

(c) Subject to subsection (g) of this section, when HHSC determines the applicant has complied with subsections (a) and (b) of this section, HHSC shall issue the LSRH license to the applicant.

(1) The license is effective on the issue date.

(2) The license expires on the last day of the month two years after the issue date.

(d) If an applicant decides not to continue the application process for a license, the applicant may withdraw the application. The applicant shall submit a written withdrawal request to HHSC. HHSC shall acknowledge receipt of the application withdrawal request.

(e) If the applicant does not complete all requirements of subsections (a) and (b) of this section within six months after the date HHSC receives the application and payment, HHSC may deny the application.

(f) Any fee paid for a withdrawn application under subsection (d) or (e) of this section is nonrefundable, as indicated by §511.17(a) of this subchapter.

(g) Denial of a license shall be governed by §511.121 of this chapter (relating to Enforcement).

(h) Once the LSRH is operational and providing services, HHSC shall conduct an inspection of the LSRH to ascertain compliance with the provisions of Texas Health and Safety Code Chapter 241 to the extent it does not conflict with HSC Subchapter K and this chapter. This inspection may be conducted at the same time as the inspection to determine compliance with Code of Federal Regulations Title 42, Part 482 (relating to Conditions of Participation for Hospitals).

(i) An LSRH seeking relocation shall comply with all requirements of this section, except the preclosure conference required under subsection (b)(3) of this section. An initial license for the relocated facility is effective on the issue date. The previous license is void on the date the previous location closes. The facility must notify HHSC once the previous location has closed.

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 May 21, 2025.

TRD-202501739

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

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

## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §511.79

#### STATUTORY AUTHORITY

The new section is authorized by 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; THSC §241.302, which provides that the executive commissioner of HHSC shall adopt rules to establish minimum standards for limited services rural hospitals; and THSC Chapter 331, which requires licensed hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The new section implements Texas Government Code §524.0151 and THSC Chapters 241 and 331.

#### §511.79. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, an LSRH shall establish a workplace violence prevention committee or authorize an existing LSRH committee to develop a workplace violence prevention plan.

(b) An LSRH shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the LSRH's patients;

(2) one physician licensed to practice medicine in this state who provides direct care to the LSRH's patients; and

(3) one LSRH employee who provides security services for the LSRH if any and if practicable.

(c) A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes an LSRH, may establish a single workplace violence prevention committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

(d) An LSRH shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the LSRH. In accordance with HSC §331.003, the policy shall:

(1) require the LSRH to:

(A) provide significant consideration of the violence prevention plan recommended by the LSRH's committee; and

(B) evaluate any existing LSRH violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) An LSRH shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

(1) be based on an LSRH setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the LSRH to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the LSRH;

(5) address physical security and safety;

(6) require the LSRH to solicit information from the health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the LSRH's existing occurrence reporting systems; and

(8) require the LSRH to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal LSRH policies and documents.

(g) At least annually after the date an LSRH adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the LSRH's governing body.

(h) Each LSRH shall make available on request an electronic or printed copy of the LSRH's workplace violence prevention plan to each health care provider or LSRH employee. If the committee determines the plan contains information that would pose a security threat

if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, an LSRH shall offer immediate post-incident services, including any necessary acute medical treatment for each LSRH health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, an LSRH may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, an LSRH shall prohibit LSRH personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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

Filed with the Office of the Secretary of State on May 21, 2025.

TRD-202501740

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

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



## CHAPTER 745. LICENSING

### SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

#### DIVISION 2. EXEMPTIONS FROM REGULATION

##### 26 TAC §745.117

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §745.117, concerning Which programs of limited duration are exempt from Licensing regulation.

##### BACKGROUND AND PURPOSE

The purpose of this proposal is to update the figure in §745.117 to restore two missing paragraphs in the table. The paragraphs were inadvertently removed through a recent rulemaking regarding Population Requirements for Certain Exempt Programs, which became effective on March 10, 2025. The missing two paragraphs relate to Child Care Regulation exemptions and do not impact current permit holders. For any new programs that apply for permits that would meet the exemptions, the criteria are in Human Resources Code (HRC) §42.041(b)(4) and (22).

##### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing

or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

##### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

##### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

##### COSTS TO REGULATED PERSONS

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

##### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public benefit will be a rule with language that is consistent with state statute.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any additional costs or fees on persons required to comply with this rule.

##### TAKINGS IMPACT ASSESSMENT

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

##### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 14 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R032" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by 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, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §524.0151 and HRC §42.042.

§745.117. *Programs of Limited Duration Exempt from Regulation by Child Care Regulation (CCR).*

The following programs of limited-duration are exempt from CCR regulation:

Figure: 26 TAC §745.117

[Figure: 26 TAC §745.117]

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 May 20, 2025.

TRD-202501737

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



## SUBCHAPTER J. WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

### 26 TAC §745.8301

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §745.8301, concerning What words must I know to understand this subchapter?, in Title 26, Texas Administrative Code, Chapter 745, Licensing.

#### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023, which requires Child Care Regulation (CCR) to collaborate with the Department of Family and Protective Services (DFPS) to develop and adopt a set of licensing and approval standards for kinship foster homes pursuant to the adoption of federal rules. The Administration for Children and Families amended 45 Code of Federal Regulations (CFR) Parts 1355 and 1356, with the amendments effective on

November 27, 2023. The amendments allow CCR to adopt a set of licensing or approval standards for all kinship foster homes that (1) are different from the standards used for non-kinship foster homes, and (2) will allow a child-placing agency (CPA) to issue a foster home verification to a kinship foster home that meets the new standards.

CCR is proposing an amendment to §745.8301(3) to amend the definition of "kinship foster home" to be consistent with how the term is defined across CCR and DFPS rules.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8301 (1) expands the definition of kinship foster home to include foster parents who have a longstanding and significant relationship with the foster child's family; (2) removes language from the rule for consistency with language in DFPS rules and (3) replaces "Licensing" with "Child Care Regulation (CCR)"; and (4) renames the section to "Definitions for Subchapter J."

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety and welfare of the residents of Texas; does not impose a cost on regulated persons; is necessary to receive a source of federal funds or comply with federal law; and is necessary to implement legis-

lation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved regulatory consistency by aligning definitions across agencies.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose fees and a CPA is not required to verify kinship foster homes.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R047" in the subject line.

#### STATUTORY AUTHORITY

The amended section is authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amended section affects Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§745.8301. *Definitions for Subchapter J. [What words must I know to understand this subchapter?]*

These words have the following meanings in this subchapter:

(1) Foster family home--A home that is the primary residence of the foster parent or parents and provides care to six or fewer children or young adults, under the regulation of a child-placing agency. Also referred to as "foster home."

(2) Foster parent--A person verified to provide child care services in the foster home.

(3) Kinship foster home--A foster family home with a foster parent or parents who:

(A) Is related to a foster child by consanguinity or affinity; or

(B) Has a longstanding and significant relationship with the foster child or [before the child is placed with] the foster child's family [parent].

(4) Variance--A decision by Child Care Regulation (CCR) that there is good and just cause for an operation to meet the purpose of a minimum standard in a different way.

(5) [(4)] Waiver--A decision by CCR [Licensing] that waives an operation's compliance with a minimum standard if the economic impact of compliance with that standard is great enough to make compliance impractical.

[(5) Variance--A decision by Licensing that there is good and just cause for an operation to meet the purpose of a minimum standard in a different way.]

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 May 21, 2025.

TRD-202501801

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 438-3269



## CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §749.2472 and new §§749.4401, 749.4403, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 749.4441, 749.4443, 749.4445, 479.4447, 479.4449, 749.4451, 749.4461, 749.4463, 749.4465, 749.4471, 749.4473, 749.4475, 749.4477, 749.4479, 749.4481, 749.4483, 749.4485, 749.4487, 749.4489, 749.4491, 749.4493, 749.4501, 749.4503, 749.4505, 749.4507, 749.4509, 749.4511, 749.4513, 749.4515, 749.4517, 749.4519, 749.4521, 749.4523, 749.4551, 749.4553, 749.4555, 749.4557, 749.4559, 749.4561, 749.4563, 749.4565, 749.4567, 749.4569, 749.4571, 749.4573, 749.4575, 749.4577, 749.4579, and 749.4581 in Texas Administrative Code, Title 26, Chapter 749, Minimum Standards for Child-Placing Agencies.

#### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023, which requires Child Care Regulation (CCR) to collaborate with the Department of Family and Protective Services (DFPS) to develop and adopt a set of licensing and approval standards for kinship foster homes pursuant to the adoption of federal rules. The Administration for Children and Families amended 45 Code of Federal Regulations (CFR) Parts 1355 and 1356, with the amendments effective on November 27, 2023. The amendments allow CCR to adopt a set of licensing or approval standards for all kinship foster homes that (1) are different from the standards used for non-kinship foster homes, and (2) will allow a child-placing agency (CPA) to is-

sue a foster home verification to a kinship foster home that meets the new standards.

CCR is proposing the repeal of §749.2472 and new rules, in new Subchapter W of Chapter 749, to establish a CPA's ability to issue a non-expiring foster home verification to a kinship foster home.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §749.2472 deletes the rule as it is no longer necessary because the content of the rule has been modified and moved to new §749.4503(a)(2).

Proposed new Subchapter W, Kinship Foster Homes, adds a new subchapter in Chapter 749 for rules related to kinship foster homes as listed below.

Proposed new Division 1, Definitions and Scope, in Subchapter W, (1) contains definitions for words and terms used in Subchapter W; and (2) establishes who is required to comply with the rules.

Proposed new §749.4401, Definitions for Subchapter W, provides terms and definitions that are used throughout the subchapter. The rule (1) includes definitions for the terms "affinity" and "consanguinity," which are identical to the definitions found in Chapter 745, Licensing, Subchapter A, §745.21; and (2) adds definitions for "kinship caregiver," "kinship foster child," "kinship foster home," "kinship foster home verification," and "kinship foster parent."

Proposed new §749.4403, Scope, establishes that a CPA must comply with the rules in new Subchapter W (1) before issuing a kinship foster home verification and (2) while the kinship foster home verification is in effect. It also identifies the other subchapters in Chapter 749 that apply to kinship foster homes. The rule clarifies that if a home is both a foster family home and a kinship foster home, the home may follow the rules in Subchapter W relating to the direct care of a kinship foster child, but the home must: (1) be verified as a kinship foster home; and (2) follow all other applicable rules in Chapter 749 for non-kinship foster children.

Proposed new Division 2, Pre-Verification and Ongoing Training Requirements, in Subchapter W, contains rules relating to training requirements for kinship caregivers.

Proposed new §749.4421, Documentation of Required Trainings, establishes documentation requirements for required trainings. The rule requires a CPA to document the completion of all required trainings and signed agreements. It also requires that certificates for pediatric first aid and pediatric cardiopulmonary resuscitation have an expiration date and be renewed prior to the expiration date. The rule clarifies that if a CPA requires a home to complete additional training, the documentation must include (1) the topics covered; (2) the curriculum used; and (3) how the CPA determined which training topics to use.

Proposed new §749.4423, Pre-Verification Training Requirements, establishes pre-verification training requirements. The rule requires each kinship caregiver to have pre-verification training that includes: (1) an overview of the minimum standards in Chapter 749 the kinship caregiver must follow; (2) the CPA's philosophy, structure, policies, and services; (3) a review of the prudent parent standard; (4) a review of the agreements between the CPA and kinship foster parents; and (5) a review of the CCR Statement of Foster Parents and Child-Placing Agency Rights and Responsibilities.

Proposed new §749.4425, Pediatric First Aid and Pediatric Cardiopulmonary Resuscitation (CPR) Requirements, requires one kinship foster parent to be certified in pediatric first aid and pediatric CPR prior to the home's verification. The rule allows subsequent caregivers to be certified within 90 days after the CPA issues the home's verification. The rule clarifies that the training must (1) include rescue breathing and choking, and (2) adhere to guidelines for CPR established by the American Heart Association.

Proposed new §749.4427, General Training Requirements, establishes the general training requirements and timeframes for completion for kinship caregivers. The rule requires all kinship caregivers to complete four hours of general training and at least six hours of emergency behavior intervention training within 60 days after the CPA issues the home's verification. If the home will care for children younger than two years of age, it also requires one kinship foster parent to complete safe sleep training prior to the CPA verifying the home; the rule additionally requires all other caregivers in the home to complete safe sleep training within 90 days after the verification. For all caregivers that administer psychotropic medication, the rule requires them to complete training on administering psychotropic medication prior to administering the medication. The rule specifies that general caregiver training must include specific curriculum requirements; however, for the other trainings, the CPA must determine the appropriate curriculum.

Proposed new §749.4429, Additional Training Requirements, establishes the additional training requirements for kinship caregivers. The rule requires the CPA to annually evaluate the kinship foster home for any areas of non-compliance with minimum standards. If the CPA identifies areas of non-compliance with minimum standards, the rule requires the CPA to provide all kinship caregivers in the home with additional training appropriate to the areas of non-compliance. The rule also requires the CPA to provide at least one hour of annual training to each kinship foster parent that provides care to a kinship foster child receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder.

Proposed new Division 3, Admission and Placement, in Subchapter W, contains rules related to the admission and placement of kinship foster children.

Proposed new §749.4441, Admission Criteria, establishes criteria for admitting a kinship foster child. The rule (1) allows for regular or emergency admissions; (2) requires the CPA to ensure the placement meets the kinship foster child's needs; and (3) establishes situations when an individual over the age of 18 years old can remain in care or be admitted into the care of a kinship foster home.

Proposed new §749.4443, Documentation of Admission Information, specifies the admission information that a CPA must document into a kinship foster child's record.

Proposed new §749.4445, Initial Requirements at the Time of Admission or Verification, establishes the initial admission requirements for a kinship foster child. The rule requires the CPA to obtain specific information about the child, including (1) the circumstances that brought the child into care; (2) the child's current health status and medical conditions; (3) high-risk behaviors, including a suicide risk screening when applicable; (4) known contraindications to the use of restraint; and (5) any safety plans the kinship caregiver will implement related to the behaviors or risk factors.

Proposed new §749.4447, Placement Agreement, describes the general purpose of a placement agreement and specifies what the agreement must include.

Proposed new §749.4449, Admission Assessment, establishes requirements for the admission assessment. The rule describes functions for which the CPA must use information obtained during the assessment; timeframes for when the assessment must be completed; and what the assessment must include. For a child who is over three years of age, the rule also allows the CPA to use a written assessment of the child's needs provided by DFPS in lieu of the admission assessment; this documentation is presently entitled the Child Assessment of Needs and Strengths (CANS).

Proposed new §749.4451, Post-Placement Contacts, establishes requirements for post-placement contacts with the kinship foster child. The rule requires the CPA to have monthly face-to-face contact with a kinship foster child. The rule establishes requirements for the length and content of the visits.

Proposed new Division 4, Medical and Dental Requirements, in Subchapter W, contains rules related to medical and dental requirements for kinship foster children.

Proposed new §749.4461, Documentation Requirements for Medical and Dental Care, establishes documentation requirements related to medical and dental care. The rule specifies information the CPA must verify is documented in the kinship foster child's health passport or record; information a kinship foster home must maintain in a daily medication log for the child on a form provided by the CPA; and documentation requirements when a kinship caregiver fails to administer any medication to the child according to the medication label or subsequent signed orders.

Proposed new §749.4463 General Medical, Dental, and Medication Requirements, establishes the general medical, dental, and medication requirements. The rule describes requirements for medical and dental care that a kinship foster child must receive and requires (1) a kinship foster child to receive timely routine and emergency medical and dental care; (2) the CPA to verify that a kinship foster child at least three years of age has had (A) a medical examination in the last year and (B) a dental examination in the last year; (3) all medications to be administered according to the label or to a prescriber's subsequent signed orders; and (4) all medications to be stored securely and in a way that makes them inaccessible to kinship foster children.

Proposed new §749.4465, Immunization and Tuberculosis Testing, establishes requirements for immunizations and tuberculosis testing for kinship foster children.

Proposed new Division 5, Daily Care, Education, and Discipline, in Subchapter W contains rules relating to the daily care, education, and discipline of kinship foster children.

Proposed new §749.4471, Normalcy, requires a kinship foster parent to ensure a kinship foster child can participate in childhood activities, including unsupervised activities, that are appropriate in relation to the child's age and developmental needs.

Proposed new §749.4473, Infants: Basic Care and Supervision, establishes basic care and supervision requirements for infants in a kinship foster home. The rule establishes (1) that infants receive individual and prompt attention; (2) environmental requirements, including (A) keeping the area free of harmful objects, including diaper changing items, and (B) ensuring electrical outlets are inaccessible; and (3) that an infant may never be left

unsupervised. The rule defines what is considered supervision for a sleeping infant, an awake infant, and further establishes supervision requirements.

Proposed new §749.4475, Infants: Cribs, establishes crib requirements for infants. The rule (1) requires a kinship foster home to have an individual crib that meets certain requirements for an infant; (2) clarifies when the home may use a full-sized, portable, or mesh-side crib; (3) prohibits (A) using a stackable crib for an infant and (B) leaving an infant in a crib portable crib, or mesh-side crib with a side folded down; (4) clarifies that special items may be used to assist with safe sleep in a crib used by an infant with primary medical needs with the written recommendation from a health care professional; and (5) requires the CPA to notify the parent of each child in care of each foster home verified by the CPA if specific rules in this section are cited as deficient.

Proposed new §749.4477, Infants: Safe Sleep Requirements, establishes safe sleep requirements for infants. The rule requires kinship caregivers to (1) place an infant who is unable to turn over unassisted in a face up sleeping position unless they have signed orders from a health care professional; (2) ensure the infant's head, face, and crib are not covered by any item; (3) ensure the infant does not (A) co-sleep with an adult or (B) sleep in a restrictive device, such as a car seat, swing, or highchair; and (4) ensure infants who can roll over are not swaddled. The rule requires the CPA to notify the parent of each child in care of each foster home verified by the CPA if specific rules in this section are cited as deficient.

Proposed new §749.4479, Infants: Equipment Safety, establishes equipment safety requirements for infants.

Proposed new §749.4481, Infants: Feeding Requirements, establishes feeding requirements for infants. The rule requires kinship caregivers to (1) feed an infant based on the recommendations of the infant's health-care professional; (2) hold infants birth through six months old or unable to sit unassisted while feeding; (3) never prop a bottle with anything other than the infant's or adult's hands; and (4) sterilize shared bottles and clean highchair trays before each use when caring for more than one infant.

Proposed new §749.4483, Toddlers: Basic Care Requirements, establishes basic care requirements for toddlers. The rule includes (1) environmental requirements, including (A) keeping the area free of harmful objects, and (B) ensuring electrical outlets are inaccessible; and (2) supervision requirements, including (A) never leaving a toddler unsupervised, and (B) ensuring the toddler is within eyesight or hearing range. The rule allows for the use of video camera or audio monitoring if the kinship caregiver is close enough to intervene as needed.

Proposed new §749.4485, Additional Requirements for Pregnant Kinship Foster Children, establishes additional requirements for pregnant kinship foster children. The rule requires the CPA to ensure information, training, and counseling is available to the kinship foster child.

Proposed new §749.4487, Additional Requirements for Kinship Foster Children Receiving Treatment Services for Primary Medical Needs or Intellectual Disabilities, establishes additional requirements for kinship foster children receiving treatment services for primary medical needs or intellectual disabilities. The rule requires kinship caregivers to (1) follow recommendations from the kinship foster child's medical providers; and (2) ensure that a kinship foster child receiving treatment services for primary

medical needs or an intellectual disability has opportunities for sensory stimulation.

Proposed new §749.4489, Educational Services: General, establishes general educational requirements for kinship foster children. The rule requires the CPA to arrange appropriate education that includes an approved or accredited educational facility or program, and to advocate for a kinship foster child to receive educational and related services to which they are entitled under federal and state law. The rule establishes specific requirements for kinship foster children with autism spectrum disorder. The rule also requires the CPA to designate a liaison between the agency and the school for a kinship foster child who receives treatment services.

Proposed new §749.4491, Education Services: Caregiver Responsibilities, establishes kinship caregiver responsibilities related to education. The rule requires kinship caregivers to (1) request educational meetings with the school if concerns are identified; (2) attend scheduled educational meetings and staffings; and (3) know what is in the kinship foster child's Individual Education Plan.

Proposed new §749.4493, Discipline and Punishment, establishes discipline and punishment requirements in a kinship foster home. The rule requires (1) only a kinship caregiver known to a kinship foster child can discipline the child; and (2) all disciplinary measures be consistent with child's rights related to discipline and punishment.

Proposed new Division 6, Screenings and Verifications, in Subchapter W contains rules relating to the requirements for kinship home screenings and the verification of kinship foster homes.

Proposed new §749.4501, General Requirements, establishes the general requirements for a kinship foster home verification. The rule (1) requires kinship parents to be at least 18 years old; (2) establishes circumstances when a CPA can verify an individual spouse as a kinship foster parent; and (3) prohibits a kinship foster home from being verified by more than one CPA at a time for kinship foster care services.

Proposed new §749.4503, Kinship Foster Home Screenings, establishes the steps that a CPA takes to complete a home screening for a kinship foster home. The rule clarifies that the CPA (1) may (A) complete the home screening as detailed in the rule, or (B) use a completed home assessment obtained from the Department of Family and Protective Services (DFPS) or Single Source Continuum Contractor (SSCC) that meets the requirements of the Subchapter W, Division 5; and (2) must update a kinship foster home screening any time there is a major life change. The rule describes the specific categories of information that the CPA must discuss, document, and assess through interviews with each prospective kinship foster parent and joint interviews. The rule also requires a CPA to report to CCR any information obtained about domestic violence.

Proposed new §749.4505, Verifying a Kinship Foster Home, establishes steps the CPA takes to complete a kinship foster home verification. The rule requires the CPA to (1) complete and document requirements of Subchapter W, Division 5; (2) obtain a sketch or photo of the inside and outside of the home; (3) inspect the home and ensure and document compliance with applicable rules relating to Daily Care, Education, and Discipline, and Health and Safety Requirements, Environment, Space, and Equipment; (4) evaluate and make recommendations about the home's ability to keep children safe; (5) document (A) any indicators of substantial safety risk to children based on the evaluation

of the home and (B) how the CPA addressed them prior to approving and verifying the home; (6) obtain from the child placement management staff (CPMS) (A) review and approval of the home screening and (B) recommendation for verification of the home; and (7) issue a verification certificate that includes (A) the name of the kinship foster family, (B) capacity details, and (C) services the kinship foster home provides.

Proposed new §749.4507, Previously Verified Kinship Foster Homes, establishes requirements for working with kinship foster homes that were previously verified by or transferring from another CPA.

Proposed new §749.4509, Releasing Information About a Previously Verified Kinship Foster Home, establishes requirements for releasing information about a previously verified kinship foster home. The rule requires a CPA to release background information about current and previous kinship foster homes to other CPAs and independent contractors who are hired or required by the court.

Proposed new §749.4511, Changes to the Verification Status of a Kinship Foster Home, establishes requirements for changing the verification status of a kinship foster home. The rule (1) describes changes a CPA must inform CCR about within two business days; (2) requires that child placement management staff ensure that any additional services offered by a kinship foster home do not create a conflict of care with children currently in the home; and (3) includes requirements for when a kinship foster home adds a new, unrelated household member.

Proposed new §749.4513, Transferring or Closing a Kinship Foster Home, establishes the criteria for a transfer or closing summary for a kinship foster home, including what the summary must include and timeframes for their completion.

Proposed new §749.4515, Temporary Kinship Foster Home Verifications, establishes criteria for issuing a temporary kinship foster home verification, including inspection requirements, that the temporary verification can be valid for a maximum of six months, and that the CPA must ensure compliance with requirements in subchapter W before issuing a non-expiring kinship foster home verification to the home at the new location.

Proposed new §749.4517, Capacity and Child/Caregiver Ratio, establishes capacity and child/caregiver ratio for a kinship foster home.

Proposed new §749.4519, Supervision, establishes supervision requirements at a kinship foster home. The rule addresses what the CPA must ensure that the supervision of a kinship foster child accounts for; describes the responsibilities of a kinship caregiver; and information that a kinship caregiver must have when a kinship foster child participates in an unsupervised childhood activity.

Proposed new §749.4521, Kinship Foster Children as Babysitters, establishes requirements for when a kinship foster child may act as a babysitter.

Proposed new §749.4523, Respite Child-Care Services, establishes that a kinship foster home may only provide respite care services for kinship foster children. The rule requires the CPMS to (1) approve of any respite placement to ensure the respite care will not cause a conflict of care; and (2) ensure information is shared about kinship foster children for continuity of care.

Proposed new Division 7, Health and Safety Requirements, Environment, Space, and Equipment, in Subchapter W, contains



rules relating to health and safety, environment, space, and equipment in kinship foster homes.

Proposed new §749.4551, Documentation of Health and Safety Requirements, establishes what a CPA must document in a kinship foster home's record related to health and safety requirements.

Proposed new §749.4553, Health and Fire Inspections, establishes requirements for health and fire inspections or evaluations at a kinship foster home. The rule describes who must conduct each type of inspection or evaluation and requires a home to correct deficiencies and comply with any conditions or restrictions.

Proposed new §749.4555, Emergency Plans, establishes requirements for a written plan that a kinship foster home must have for handling potential disasters and emergencies, including fire and severe weather. The rule requires the CPA that verified the home to annually review and evaluate the plan with all kinship caregivers and kinship foster children in the home. The rule allows the CPA to develop the plan or to obtain a copy of the plan the kinship foster family developed with DFPS or the relevant Single Source Continuum Contractor.

Proposed new §749.4557, Fire Safety, establishes fire safety requirements. The rule includes the places in a kinship foster home where there must be a working smoke detector; a requirement for the home to have at least one non-expired and operational fire extinguisher that is accessible in an emergency; and that the home must ensure that exits to the home are not blocked.

Proposed new §749.4559, Animals, requires that any animals in a kinship foster home do not pose a health or safety threat to kinship foster children.

Proposed new §749.4561, Weapons, Firearms, Explosive Materials, and Projectiles at a Kinship Foster Home, establishes requirements related to weapons, firearms, explosive materials, and projectiles at a kinship foster home. The rule requires a CPA to have a policy identifying specific precautions to ensure that a kinship foster child does not have unsupervised access to these items; requires a kinship foster home to notify the CPA of a change in the type of one of these items in the home; requires the CPA to determine whether it is appropriate for a specific kinship foster child to use a toy that explodes or shoots; and exempts a firearm that is inoperable and solely ornamental from storage requirements.

Proposed new §749.4563, Storage of Weapons, Firearms, Explosive Materials, or Projectiles in a Kinship Foster Home, establishes what factors the CPA must consider when determining if a weapon, firearm, explosive material, or projectile is stored adequately in a kinship foster home.

Proposed new §749.4565, Determining Weapons, Firearms, Explosive Materials, or Projectiles are Present in a Kinship Foster Home, establishes how a CPA determines if weapons, firearms, explosive materials, and projectiles are present at a kinship foster home. The rule requires the CPA to assess this information during the home screening and document (1) the items present in the home; and (2) specific precautions the kinship caregiver must take to ensure that the kinship foster children do not have unsupervised access. The rule further requires the CPA to discuss these items with the kinship foster home during the two-year evaluation.

Proposed new §749.4567, Transporting a Kinship Foster Child in a Vehicle Where Firearms, Explosive Materials, or Projectiles are Present, establishes requirements for transporting a kinship

foster child in a vehicle where firearms, explosive materials, or projectiles are present. Due to the statutory requirements in Texas Human Resources Code §42.042(e-2), the rule addresses requirements related to transporting a child in a vehicle where a handgun is present separately from requirements related to transporting a child in a vehicle where another type of firearm or an explosive material or projectile is present.

Proposed new §749.4569, Physical Environment of a Kinship Foster Home, establishes requirements related to the safety of indoor and outdoor space and equipment. The rule requires the home to ensure that indoor and outdoor space and equipment do not pose a safety risk to kinship foster children. The rule also includes supervision requirements to prevent a kinship foster child from having access to space or equipment, if necessary, based on the child's age, maturity, and service plan restrictions.

Proposed new §749.4571, Indoor Space: Sleeping Spaces and Sleeping Surfaces, establishes requirements related to sleeping spaces and surfaces used by a kinship foster child, as well as what CPMS must determine and document before approving a kinship foster child to share a sleeping space or surface with another individual.

Proposed new §749.4573, Indoor Space: Bathrooms, describes bathroom requirements for a kinship foster home.

Proposed new §749.4575, Nutrition and Food Safety, establishes requirements for food and food safety at a kinship foster home, including that (1) kinship caregivers provide kinship foster children with drinking water and food that is served in a safe and sanitary manner; and (2) all food items are stored in a manner that protects them from contamination, spoiling, and insects and rodents.

Proposed new §749.4577, Transportation, establishes requirements for transporting a kinship foster child. The rule requires (1) kinship caregivers to secure safe and reliable transportation; (2) special provisions to be made for transporting non-ambulatory and non-mobile children; and (3) each kinship foster child to be secured in a safety seat or safety belt appropriate to their age, height, and weight.

Proposed new §749.4579, Water Safety: Pools, Hot Tubs, and Bodies of Water, establishes general water safety rules. The rule includes requirements related to a door alarm or lock; the bottom of a pool having to be visible; and swimming pool chemicals and machinery being inaccessible to kinship foster children.

Proposed new §749.4581, Swimming Supervision, establishes supervision requirements for swimming activities. The rule requires kinship caregivers to (1) inform each kinship foster child about house rules related to water activities; (2) adequately supervise and monitor kinship foster children while participating in water activities; (3) ensure that a kinship foster child has access to a lifesaving device when participating in water activities; and (4) be able to clearly see all parts of the swimming pool or hot tub while supervising. The rule defines "personal flotation device" (PFD) and requires a kinship foster child who is unable to swim to wear a PFD of the correct size for the child while participating in water activities.

#### FISCAL NOTE

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

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; are necessary to receive a source of federal funds or comply with federal law; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

## PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be (1) increased safety and well-being of foster children placed with kinship caregivers who meet basic health and safety requirements; (2) kinship providers who can accept foster children more quickly with rules that are unique to kinship providers; and (3) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rules do not impose fees and a CPA is not required to verify kinship foster homes.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R047" in the subject line.

## SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 3. VERIFICATION OF FOSTER HOME

### 26 TAC §749.2472

#### STATUTORY AUTHORITY

The repealed section is authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

*§749.2472. Are there any additional requirements to verify a foster home that is currently acting as a kinship home with the Child Protective Services (CPS) Division of the Department?*

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 May 21, 2025.

TRD-202501802

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 438-3269



## SUBCHAPTER W. KINSHIP FOSTER HOMES DIVISION 1. DEFINITIONS AND SCOPE

### 26 TAC §749.4401, §749.4403

#### STATUTORY AUTHORITY

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt

rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4401. Definitions for Subchapter W.

These terms have the following meanings in this subchapter.

(1) Affinity--Related by marriage, as set forth in Texas Government Code §573.024.

(2) Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other, or they share a common ancestor. An adopted child is related by consanguinity for this purpose. Consanguinity is defined in Texas Government Code §573.022.

(3) Kinship caregiver--A kinship caregiver:

(A) Is a person counted in the child/caregiver ratio for kinship foster care services, including employees, kinship foster parents, contract service providers, and volunteers whose duties include direct care, supervision, guidance, and protection of a kinship foster child, including any person who is solely responsible for a kinship foster child; a child placement staff taking a kinship foster child on an appointment or doctor's visit is an example of a kinship caregiver; and

(B) Does not include a babysitter, an overnight care provider, or a respite child-care provider unless the person is:

(i) A verified kinship foster parent;

(ii) An agency employee;

(iii) A contract service provider; or

(iv) A volunteer.

(4) Kinship foster child--A child in the care of a kinship foster home who:

(A) Is related to the kinship foster parents by consanguinity or affinity; or

(B) Has, or whose family has a longstanding and significant relationship with the kinship foster parent.

(5) Kinship foster home--A foster family home that has a kinship foster parent or parents.

(6) Kinship foster home verification--A verification for a kinship foster home. A kinship foster home must meet certain requirements for a non-expiring foster home verification, as provided in this subchapter, and may only care for kinship foster children.

(7) Kinship foster parent--A foster parent who:

(A) Is related to a foster child by consanguinity or affinity;

(B) Has a longstanding and significant relationship with a foster child or the child's family before the child is placed; or

(C) Is the spouse of a foster parent who has a longstanding and significant relationship with the foster child or the foster child's family.

§749.4403. Scope.

(a) A child-placing agency (CPA) must comply with the rules in the following subchapters of this chapter, as applicable, before issuing a kinship foster home verification and while the kinship foster home verification is in effect:

(1) Subchapter A (relating to Purpose and Scope);

(2) Subchapter B (relating to Definitions and Services);

(3) Subchapter C (relating to Organization and Administration);

(4) Subchapter D (relating to Reports and Record Keeping);

(5) Subchapter E (relating to Agency Staff and Caregivers);

(6) Subchapter G (relating to Children's Rights);

(7) Subchapter I (relating to Foster Care Services: Service Planning, Discharge);

(8) Subchapter L (relating to Foster Care Services: Emergency Behavior Intervention);

(9) Subchapter N (relating to Foster Homes: Management and Evaluation); and

(10) Subchapter P (relating to Foster-Adoptive Homes and Legal Risk Placements).

(b) For the regulation and ongoing monitoring of a kinship foster home, the CPA must comply with the divisions of this subchapter as noted in the following chart.  
Figure: 26 TAC §749.4403(b)

(c) A foster family home that also provides care to a kinship foster child may follow the rules in this subchapter relating to the direct care of kinship foster children. However, the home must:

(1) Be verified as a foster family home; and

(2) Follow all other applicable rules in this chapter for the direct care of non-kinship foster children.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## DIVISION 2. PRE-VERIFICATION AND ONGOING TRAINING REQUIREMENTS

**26 TAC §§749.4421, 749.4423, 749.4425, 749.4427, 749.4429**

### STATUTORY AUTHORITY

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4421. Documentation of Required Trainings.

(a) A child-placing agency (CPA) must document completion of all required training, including any training certificates and signed agreements reviewed during pre-verification training, in the appropriate kinship foster home record.

(b) Certificates for pediatric first aid and pediatric cardiopulmonary resuscitation must have an expiration date, and the training documented on the certificate must be renewed prior to the expiration date.

(c) If the CPA determines that a kinship foster home requires additional training to address areas of non-compliance identified during the CPA's annual evaluation of the kinship foster home, the CPA must document:

(1) The additional training topics covered;

(2) The curriculum used for each of the kinship caregiver's additional training; and

(3) How the CPA determined which additional training topics were appropriate.

§749.4423. Pre-Verification Training Requirements.

Prior to a child-placing agency (CPA) verifying a kinship foster home, each kinship caregiver must have pre-verification training that includes:

(1) An overview of the relevant and applicable rules of this chapter;

(2) The CPA's philosophy, organizational structure, and policies, as well as a description of services and programs the CPA offers;

(3) A review of the reasonable and prudent parent standard, including how the kinship caregivers will use the standard to ensure safety in the kinship foster home;

(4) A review of the agreements between the CPA and kinship foster parents while the verification is in effect; and

(5) A review of the CCR Statement of Foster Parent and Child-Placing Agency Rights and Responsibilities, Form 2907, or a form created by the CPA with the same information.

§749.4425. Pediatric First Aid and Pediatric Cardiopulmonary Resuscitation (CPR) Requirements.

(a) One kinship foster parent must be certified in pediatric first aid and pediatric CPR before a child-placing agency (CPA) issues the kinship foster home's verification. Other kinship caregivers, including a second kinship foster parent, must be certified in pediatric first aid and CPR within 90 days after the CPA verifies the home.

(b) Pediatric first aid must include training related to rescue breathing and choking.

(c) Pediatric CPR training must adhere to guidelines for CPR established by the American Heart Association.

§749.4427. General Training Requirements.

A kinship caregiver must complete the following applicable types of general training within the noted timeframes.

Figure: 26 TAC §749.4427

§749.4429. Additional Training Requirements.

(a) From the date a child-placing agency (CPA) verifies a kinship foster home, the CPA must annually evaluate the kinship foster home to identify any areas of non-compliance with minimum standards.

(b) If the CPA identifies areas of non-compliance in the kinship foster home, the CPA must provide all kinship caregivers in that kinship

foster home with additional training appropriate to address the areas of non-compliance.

(c) For each kinship foster home that provides care to a kinship foster child receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder, the CPA must provide at least one hour of annual training to each kinship caregiver relating to the treatment services that the kinship foster child receives, regardless of whether the CPA identifies concerns in the home.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## **DIVISION 3. ADMISSION AND PLACEMENT**

**26 TAC §§749.4441, 749.4443, 749.4445, 749.4447, 749.4449, 749.4451**

### **STATUTORY AUTHORITY**

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4441. Admission Criteria.

(a) A kinship foster home may only provide foster care to kinship foster children. A kinship foster child may be admitted as a regular admission or emergency admission.

(b) Each kinship placement must meet the kinship foster child's physical, medical, recreational, educational, and emotional needs as identified in the kinship foster child's admission assessment or the written assessment of the child's needs and strengths by the Texas Department of Family and Protective Services.

(c) After a kinship foster child turns 18 years old, the person may remain in care until the person's 23rd birthday to:

(1) Transition to independence, including attending college or vocational or technical training;

(2) Attend high school, a program leading to a high school diploma, or GED classes;

(3) Complete the child-placing agency's program; or

(4) Stay with a minor sibling.

(d) A young adult who turns 18 years old in the care of a kinship foster home may remain in care indefinitely if the person:

(1) Continues to need the same level of care; and

(2) Is unlikely to physically or intellectually progress over time.

(e) The CPA may admit a young adult into the care of a kinship foster home if the person:

(1) Comes immediately from another residential child-care operation;

(2) Meets the conditions of subsection (d) of this section; and

(3) Is in the care of the Texas Department of Family and Protective Services.

§749.4443. Documentation of Admission Information.

A child-placing agency (CPA) must document the following in the kinship child's record:

(1) Initial admission information;

(2) The admission assessment;

(3) The signed placement agreement; and

(4) Post-placement contacts.

§749.4445. Initial Requirements at the Time of Admission or Verification.

For each kinship foster child living in the kinship foster home at the time of verification or who is subsequently placed in the home, a child-placing agency (CPA) must obtain the following information prior to verifying the home or admitting the kinship foster child:

(1) A brief description of the circumstance that led to the kinship foster child's placement in the kinship foster home;

(2) Current health status, chronic or acute health conditions, such as asthma, diabetes, or allergies, and medication the kinship foster child is taking;

(3) Identification of the kinship foster child's high-risk behaviors, if applicable; suicide risk screening, if required; and supervision needs;

(4) Known contraindication to the use of restraint; and

(5) Any safety plans kinship caregivers will implement related to the behaviors or risk factors.

§749.4447. Placement Agreement.

A placement agreement is a child-placing agency's (CPA's) agreement with the kinship foster child's parent or the kinship foster child that defines the CPA's roles and responsibilities and authorizes the CPA to obtain or provide services for the kinship foster child. The placement agreement must include:

(1) Authorization permitting the CPA to care for the kinship foster child;

(2) A medical consent form signed by a person authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

§749.4449. Admission Assessment.

(a) A child-placing agency (CPA) must use the information obtained during the admission assessment to facilitate service planning and evaluate whether the placement is appropriate for the kinship foster child.

(b) The admission assessment must be complete within the following timeframe.

Figure: 26 TAC §749.4449(b)

(c) The admission assessment must include:

(1) A description of the circumstances that led to the kinship foster child's referral for substitute care;

(2) A description of the kinship foster child's behavior, including appropriate and maladaptive behavior and any high-risk behavior;

(3) Any history of physical, sexual, or emotional abuse or neglect;

(4) Current medical status, including the available results of any medical and dental examinations;

(5) Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment;

(6) The child's current developmental, educational, and behavioral level of functioning;

(7) The kinship foster child's social history, including information about the past and existing relationship with the kinship foster child's birth parents, siblings, and extended family members and the quality of those relationships with the child;

(8) The kinship foster child's criminal history, if applicable;

(9) A determination how the CPA can meet the needs of the kinship foster child and the services the CPA plans to provide; and

(10) If the child is at least three years of age, the most recent copy of the written assessment of the child's needs and strengths by the Texas Department of Family and Protective Services (DFPS).

(d) The written assessment of the child's needs and strengths by DFPS may be used in place of completing the admission assessment. If the DFPS assessment is used in place of the admission assessment, it must be requested and reviewed within the timeframe established in subsection (b) of this section.

(e) The completed admission assessment or written assessment of the child's needs and strengths by DFPS must be shared with the kinship foster parents.

§749.4451. Post-Placement Contacts.

(a) Child placement staff must have monthly face-to-face contact with a kinship foster child.

(b) Monthly visits must meet the following requirements:

(1) At least half of the contacts must occur in the foster home;

(2) The child placement staff must ensure that the kinship foster child is safe and their basic needs are being met;

(3) The visits must:

(A) Be for a length of time to address the needs of a kinship foster child who is verbal, or observe the kinship foster child if they are non-verbal;

(B) Provide an opportunity to meet privately; and

(C) Provide an opportunity for the kinship foster child to express their feelings about how the placement is working out.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## DIVISION 4. MEDICAL AND DENTAL REQUIREMENTS

**26 TAC §§749.4461, 749.4463, 749.4465**

### STATUTORY AUTHORITY

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4461. Documentation Requirements for Medical and Dental Care.

(a) A child-placing agency (CPA) must verify that the following is documented either in the kinship foster child's health passport or in the kinship foster child's record:

(1) Each emergency medical and dental visit or hospitalization, including a discharge summary;

(2) Applicable immunization requirements; and

(3) Results of the kinship foster child's tuberculosis screening.

(b) A kinship foster home must maintain a daily medication log for each controlled substance and psychotropic prescription medication administered to a kinship foster child on a form provided by the CPA. The daily medication log must include:

(1) The name of the kinship foster child;

(2) The name of the controlled substance or psychotropic medication administered; and

(3) The date and time the medication was administered.

(c) If a kinship caregiver fails to administer any medication to a kinship foster child according to the medication label or subsequent signed orders, the kinship caregiver must document the following on a form provided by the CPA:

(1) The kinship foster child's name;

(2) The medication name;

(3) A description of the medication error; and

(4) How the kinship caregiver ensured the kinship foster child's safety.

§749.4463. General Medical, Dental, and Medication Requirements.

(a) A kinship foster child must receive timely routine and emergency medical and dental care.

(b) At the time of verification, a child-placing agency (CPA) must verify whether a kinship foster child who is at least three years old has had a medical examination within the past year and a dental examination within the past year. If the CPA determines that the child has not had one of these examinations during that time frame, the CPA must develop a plan for the child to receive the examination.

(c) All medications must be administered according to the instructions on the label or according to a prescribing health-care professional's subsequent signed order.

(d) All medications must be stored securely and in a way that makes them inaccessible to kinship foster children.

§749.4465. Immunizations and Tuberculosis Testing.

(a) Each kinship foster child that a child-placing agency admits must meet and continue to meet applicable immunization requirements as specified by the Texas Department of State Health Services.

(b) Each kinship foster child over the age of one year must have a documented tuberculosis screening that was conducted as recommended in the testing and diagnosis guidelines by the Centers for Disease Control and Prevention (CDC) within 30 days before or after beginning to live at a kinship foster home unless the child:

(1) Has lived at a regulated residential child-care operation within the previous 12 months; and

(2) Provides documentation of tuberculosis screening.

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

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Karen Ray

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## DIVISION 5. DAILY CARE, EDUCATION, AND DISCIPLINE

**26 TAC §§749.4471, 749.4473, 749.4475, 749.4477, 749.4479, 749.4481, 749.4483, 749.4485, 749.4487, 749.4489, 749.4491, 749.4493**

### STATUTORY AUTHORITY

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4471. Normalcy.

A kinship foster parent must ensure a kinship foster child has the opportunity to participate in childhood activities, including unsupervised

activities, as much as possible. Childhood activities, including unsupervised activities, must be appropriate in relation to the kinship foster child's age and developmental needs.

§749.4473. Infants: Basic Care and Supervision.

(a) Each infant in a kinship foster home must receive individual attention, including play, talking, cuddling, and holding.

(b) A kinship caregiver must provide prompt attention to an infant's physical needs, such as feeding and diapering.

(c) A kinship caregiver must ensure that the environment is safe for each infant, including:

(1) Keeping the area free of objects that may choke or harm the infant; and

(2) Ensuring accessible electrical outlets have childproof covers or safety outlets.

(d) Items necessary for diaper changing must be kept out of the reach of kinship foster children.

(e) A kinship caregiver must never leave an infant unsupervised.

(1) A sleeping infant is considered supervised if the kinship caregiver:

(A) Is within eyesight or hearing range of the infant and can intervene as needed; or

(B) Uses a video camera or audio monitoring device to monitor the infant and is close enough to the infant to intervene as needed.

(2) An awake infant is considered supervised if the kinship caregiver is within eyesight of the infant and is close enough to the infant to intervene as needed. For short periods of time during routine household activities, the infant may be out of the kinship caregiver's eyesight, as long as:

(A) The infant is within hearing range of the kinship caregiver;

(B) The infant's environment is free of any safety hazards; and

(C) The kinship caregiver can intervene immediately, as needed.

§749.4475. Infants: Cribs.

(a) A kinship foster home that provides care to a kinship foster child who is an infant must have an individual crib for the infant. All cribs must:

(1) Have a firm, flat mattress that snugly fits the sides of the crib, and the mattress must not be supplemented with additional foam material or pads and must be waterproof or washable;

(2) Have sheets that fit snugly and do not present an entanglement hazard;

(3) Be bare, except for a tight-fitting sheet, for an infant who is younger than twelve months of age; and

(4) Be assembled per the manufacturer's instructions with no loose hardware, damaged parts, or entrapment hazards.

(b) A kinship foster home may use a full-sized, portable, or mesh-side crib if:

(1) The kinship caregivers follow the manufacturer's instructions; and

(2) The crib has mesh that is securely attached to the top of the rails and floor plate, and the folded sides are securely latched in place when raised.

(c) The kinship foster home may not use a stackable crib for an infant.

(d) A kinship caregiver must never leave an infant in a crib, portable crib, or mesh-side crib with a side folded down.

(e) An infant receiving treatment services for primary medical needs may have special items that assist with safe sleep at the written recommendation of a health-care professional. The child-placing agency (CPA) must keep the recommendation in the kinship foster child's record.

(f) The CPA must notify the parent of each child in care of each kinship foster home verified by the CPA of any deficiencies relating to subsections (a)(1), (a)(3), or (b)(2) of this section.

§749.4477. Infants: Safe Sleep Requirements.

(a) A kinship caregiver must place an infant who is unable to turn over without assistance in a face-up sleeping position unless a healthcare professional orders otherwise. A child-placing agency (CPA) must keep any orders from a healthcare professional in the kinship foster child's record.

(b) An infant's head, face, or crib must not be covered at any time by any item, including a blanket, linen, or clothing.

(c) An infant must not co-sleep with an adult at any time, including in the adult's bed or on a couch.

(d) An infant must not sleep in a restrictive device, such as a car seat, swing, bouncy seat, or highchair. If an infant falls asleep in one of these devices, the kinship caregiver must move the infant to a crib as soon as possible.

(e) An infant who can roll over without assistance must not be swaddled.

(f) The CPA must notify the parent of each child in care of each kinship foster home verified by the CPA of any deficiencies cited in this section.

§749.4479. Infants: Equipment Safety.

A highchair, swing, stroller, infant carrier, rocker, bouncer seat, or similar type of equipment that a kinship foster home uses for an infant must have safety straps fastened when the equipment is in use with the infant.

§749.4481. Infants: Feeding Requirements.

(a) Kinship caregivers must feed an infant based on the recommendations of the infant's health-care professional.

(b) Unless recommendations from the service planning team are contrary, kinship caregivers must hold the infant while feeding the infant if the infant is:

(1) Birth through six months old; or

(2) Unable to sit unassisted in a highchair or other seating equipment during feeding.

(c) Kinship caregivers must never prop a bottle by supporting it with anything other than the infant's or adult's hands.

(d) A kinship caregiver who cares for more than one infant must:

(1) Sterilize shared bottles or training cups between uses by different infants; and

(2) Clean highchair trays before each use.

§749.4483. Toddlers: Basic Care Requirements.

(a) Each toddler must receive individual attention, including play, talking, and cuddling.

(b) A kinship caregiver must ensure that the environment is safe for each toddler, including:

(1) Keeping the area free of objects that may choke or harm the toddler; and

(2) Ensuring each accessible electrical outlet has a child-proof cover or safety outlet.

(c) A kinship caregiver must never leave a toddler unsupervised. A toddler is considered supervised if the kinship caregiver:

(1) Is within eyesight or hearing range of the child and can intervene as needed; or

(2) Uses a video camera or an audio monitoring device to monitor the kinship foster child and is close enough to the child to intervene as needed.

§749.4485. Additional Requirements for Pregnant Kinship Foster Children.

A child-placing agency must ensure information, training, and counseling is available regarding prenatal care, childbirth, and recovery from childbirth.

§749.4487. Additional Requirements for Kinship Foster Children Receiving Treatment Services for Primary Medical Needs or Intellectual Disabilities.

(a) A kinship caregiver who cares for a kinship foster child receiving treatment services for primary medical needs or an intellectual disability must follow recommendations from the kinship foster child's medical providers, including recommendations relating to physical stimulation.

(b) A kinship caregiver must ensure that a kinship foster child receiving treatment services for primary medical needs or an intellectual disability has opportunities for sensory stimulation.

§749.4489. Educational Services: General.

(a) A child-placing agency (CPA) must arrange appropriate education for each kinship foster child, including:

(1) Ensuring the kinship foster child attends an educational facility or program that is approved or accredited;

(2) Advocating for the kinship foster child to receive educational and related services to which the child is entitled under provisions of federal and state law and regulations, including the implementation of an individual education plan (IEP) for students receiving special education services; and

(3) Ensuring that an education program for a kinship foster child with autism spectrum disorder:

(A) Encourages normalization through appropriate stimulation and by encouraging self-help skills; and

(B) Is appropriate to the kinship foster child's intellectual and social functioning.

(b) For a kinship foster child receiving treatment services, the CPA must designate a liaison between the agency and the kinship foster child's school.

§749.4491. Educational Services: Caregiver Responsibilities.

Kinship caregivers must:

(1) Request Admission, Review, and Dismissal (ARD), Individual Education Plan (IEP), and Individual Transitional Planning (ITP) meetings, if concerned with a kinship foster child's education program or if the kinship foster child does not appear to be making progress;

(2) Attend ARD, IEP, ITP meetings, or other school staffings and conferences to represent the kinship foster child's educational best interests; and

(3) Know what is in the kinship foster child's IEP and support the school's efforts to implement the IEP, if applicable.

§749.4493. Discipline and Punishment.

(a) Only a kinship caregiver known to and knowledgeable of a kinship foster child may discipline the child.

(b) All disciplinary measures used with a kinship foster child must be consistent with the child's rights related to discipline and punishment.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## **DIVISION 6. SCREENINGS AND VERIFICATIONS**

**26 TAC §§749.4501, 749.4503, 749.4505, 749.4507, 749.4509, 749.4511, 749.4513, 749.4515, 749.4517, 749.4519, 749.4521, 749.4523**

### **STATUTORY AUTHORITY**

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4501. General Requirements.

(a) Each kinship foster parent must be at least 18 years old.

(b) A child-placing agency (CPA) may verify only one spouse as a kinship foster parent if:

(1) The spouse whom the CPA verifies will be the only one responsible for the day-to-day care of kinship foster children in the home; and

(2) The CPA determines that the spouses maintain separate residences.



(c) A kinship foster home may not be verified to provide kinship foster services by more than one CPA at a time; however, a home may be verified by one agency to provide kinship foster care services only and approved by another CPA for adoption only.

§749.4503. Kinship Foster Home Screenings.

(a) A child-placing agency (CPA) must complete a home screening before verifying a kinship foster home. The CPA may:

(1) Complete the home screening as detailed in this section;

or

(2) Use a completed home assessment obtained from the Texas Department of Family and Protective Services (DFPS) or Single Source Continuum Contractor (SSCC). If the CPA uses the home assessment obtained from DFPS or SSCC, the CPA is responsible for ensuring it meets the requirements of this division.

(b) The CPA must update a kinship foster home screening with an addendum any time there is a major life change in the kinship foster family.

(c) Through interviewing each prospective kinship foster parent or completing a joint interview, a CPA must obtain, discuss, document, and assess the following information about a prospective kinship foster home.

Figure: 26 TAC §749.4503(c)

(d) Regarding (c)(7) in subsection (c) of this section the CPA must report to Child Care Regulation the information obtained about the prospective kinship foster family's domestic violence history, as applicable. The CPA must report this information regardless of whether the CPA verifies the home.

§749.4505. Verifying a Kinship Foster Home.

A child-placing agency (CPA) must take the following steps to verify a kinship foster home.

(1) Complete and document the requirements in this division.

(2) Obtain the following:

(A) A sketch, photo, or other documentation of the home that shows the purposes of all rooms in the home and identifies the indoor areas for the kinship foster children's use; and

(B) A sketch or photo of the outside areas that shows the buildings, driveways, fences, storage areas, gardens, recreation areas, and bodies of water.

(3) Evaluate all areas required in this subchapter by:

(A) Completing an inspection of the kinship foster home to ensure that the home meets applicable rules relating to Daily Care, Education, and Discipline, and Health and Safety Requirements, Environment, Space and Equipment of this subchapter; and

(B) Making recommendations about the home's overall ability to keep kinship foster children safe, paying specific attention to areas of substantial safety risk to kinship foster children and how the CPA addressed areas of identified safety risks with the prospective kinship foster parent before approving and verifying the kinship foster home; and

(C) Documenting in the kinship foster home file the details of the inspection of the kinship foster home and any identified safety risks.

(4) Obtain from the child placement management staff the review and approval of the home screening, and the recommended verification of the home.

(5) Issue a verification certificate that must be posted at the kinship foster home or immediately available for review upon request that includes:

(A) The name and address of the kinship foster family;

(B) The kinship foster home's total capacity and kinship foster care capacity, including ages and sex of the kinship foster children being served; and

(C) The types of services the home provides.

§749.4507. Previously Verified Kinship Foster Homes.

(a) For a kinship foster home that was previously verified by another child-placing agency (CPA), the receiving CPA must conduct and complete a new home screening as required in this subchapter.

(b) If the kinship foster home is transferring from another CPA, the receiving CPA must request information about the home by submitting a written request to the agency that transferred the kinship foster home.

(c) If the kinship foster home is transferring from another CPA with a child in care, the receiving CPA may verify the kinship foster home prior to completion of the background check.

§749.4509. Releasing Information About a Previously Verified Kinship Foster Home.

(a) A child-placing agency (CPA) must release background information regarding a current or previous kinship foster home to:

(1) Another CPA conducting a foster home screening, pre-adoptive home screening, or post-placement adoptive report; or

(2) An independent contractor who is hired or required by the court to conduct a social study under Chapter 107 of the Texas Family Code.

(b) Background information includes:

(1) The kinship foster home screening and any related documentation or addendums;

(2) Documentation of supervisory visits and evaluations for the past year;

(3) Any record of deficiencies and their resolutions for the past year, including information regarding pending investigations and unresolved deficiencies;

(4) The most current fire and health inspections or checklists;

(5) The transfer or closing summary for the kinship foster home;

(6) Copies of any current or previous plans to achieve compliance or other type of development plan for the past two years, if applicable; and

(7) Copies of any current or previous corrective action or adverse action plans for the past two years, if applicable.

(c) A CPA must release the background information to the requesting agency by the 10th day after receiving the written request, including informing the requesting agency of any pending investigations and unresolved deficiencies. By the 10th day after the completion of any pending investigations and the resolution of any deficiencies, the CPA must release to the requesting agency the:

(1) Outcome of any investigations and any resulting deficiencies cited; and

(2) Resolution of any deficiencies.

§749.4511. Changes to the Verification Status of a Kinship Foster Home.

(a) A child-placing agency (CPA) must submit information to Child Care Regulation within two business days of:

(1) Verifying a new kinship foster home or issuing a temporary kinship foster home verification;

(2) Placing a kinship foster home on or taking it off inactive status;

(3) Changing conditions of the verification for an existing kinship foster home; and

(4) Closing a kinship foster home, including the reason the CPA closed the home.

(b) If a CPA changes the conditions of a kinship foster home's verification to allow the home to provide additional services, the child placement management staff must ensure there is no conflict of care with children currently in the home.

(c) If the kinship foster home adds a new, unrelated household member, the CPA must:

(1) Ensure the individual has the necessary background checks; and

(2) Evaluate the impact the individual will have on the kinship foster family and kinship foster children prior to the individual moving into the home.

§749.4513. Transferring or Closing a Kinship Foster Home.

(a) A child-placing agency (CPA) must complete a transfer summary or closing summary when a kinship foster home transfers to another CPA or closes.

(b) A transfer summary and a closing summary must include:

(1) A copy of the verification certificate;

(2) The kinship foster home's addresses for the past two years and, as needed, directions for rural addresses;

(3) The length of time the kinship foster parents have been verified by the CPA;

(4) For the kinship foster children that were in care for the last two years, the:

(A) Number of kinship children fostered;

(B) Type of treatment services provided to each kinship foster child; and

(C) Reason for each kinship foster child's discharge from care;

(5) A description of any limitations on the verification that were in place for the kinship foster home in caring for and working with kinship foster children;

(6) A description of any indicators of risk to children at the time of the transfer or closing;

(7) Any plan to achieve compliance or other type of development plan that was in place within the previous 12 months of the date of transfer or closing;

(8) Any corrective action or adverse action plan that was in place at the time of transfer or closing; and

(9) A statement concerning whether the CPA would recommend the kinship foster home for verification in the future, including

whether the CPA would recommend any limitations or restrictions on the verification, and the basis of the CPA's recommendation.

(c) A transfer summary must also:

(1) Include pending investigations or unresolved deficiencies; and

(2) Be completed by the 10th day after a CPA receives a written request to transfer and the transferring CPA must forward it immediately to the requesting CPA.

(d) A closing summary must also:

(1) Include the reason the home is closing, including whether the CPA required the kinship foster home to close;

(2) Include any unresolved deficiencies that have not been corrected and a description of those deficiencies; and

(3) Be completed by the 20th day after a kinship foster home is closed.

§749.4515. Temporary Kinship Foster Home Verifications.

(a) A child-placing agency (CPA) may issue a temporary kinship foster home verification when a kinship foster home moves from one residence to another. Within 30 days of the kinship foster home moving to the new residence, the CPA must inspect the new residence for compliance with health and safety requirements in this subchapter.

(b) Before issuing the non-expiring kinship foster home verification, the CPA must ensure the kinship foster home is compliant with all requirements in this subchapter.

(c) A temporary kinship foster home verification is valid for a maximum of six months.

§749.4517. Capacity and Child/Caregiver Ratio.

(a) A kinship foster home may care for up to six children regardless of the number of caregivers or ages of the children in the home. This capacity includes kinship foster children, as well as adopted and biological children living in the home, children receiving respite services, and children for whom the kinship foster home provides daycare.

(b) A kinship foster home may care for seven or eight children as recommended and approved by the Texas Department of Family and Protective Services and a child-placing agency (CPA). To approve expanding the kinship foster home's capacity, the CPA must:

(1) Complete Form 4003 Foster Family Home Capacity Exception; and

(2) Request a variance from Child Care Regulation.

§749.4519. Supervision.

(a) The child placement management staff must ensure that supervision of a kinship foster child adequately accounts for:

(1) The specific needs of the kinship foster child, including any history of high-risk behaviors that would require additional supervision; and

(2) The environment where the supervision is taking place.

(b) A kinship caregiver is responsible for:

(1) Knowing which kinship foster children the kinship caregiver is responsible for;

(2) Providing the level of supervision necessary to ensure each kinship foster child's safety and well-being, including auditory and/or visual awareness of each kinship foster child's ongoing activity as appropriate;

(3) Being able to intervene when necessary to ensure each kinship foster child's safety; and

(4) Being aware of any special supervision needs based on the kinship foster child's developmental age, maturity, and service plan restrictions.

(c) When a kinship foster child participates in an unsupervised childhood activity, the kinship caregiver must know:

(1) Where the kinship foster child is scheduled to be, and who they will be with; and

(2) How and when the kinship foster child will be returning home.

§749.4521. Kinship Foster Children as Babysitters.

(a) A kinship foster child may serve as a babysitter for another kinship foster child if the child placement management staff approves the child to babysit and establishes limits with duration and frequency.

(b) A child-placing agency must consider:

(1) The developmental age of the child who will provide the babysitting; and

(2) Any known history of high-risk behaviors of the child providing the babysitting and the child who will be babysat.

§749.4523. Respite Child-Care Services.

(a) A kinship foster home may only provide respite services to a kinship foster child.

(b) The child placement management staff (CPMS) must approve any respite child-care and ensure that the placement will not cause a conflict of care for any child that is already placed in the home.

(c) The CPMS must ensure information is shared about the kinship foster children to ensure continuity of care, including any special supervision requirements or safety plans.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## DIVISION 7. HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE, AND EQUIPMENT

**26 TAC §§749.4551, 749.4553, 749.4555, 749.4557,  
749.4559, 749.4561, 749.4563, 749.4565, 749.4567, 749.4569,  
749.4571, 749.4573, 749.4575, 749.4577, 749.4579, 749.4581**

### STATUTORY AUTHORITY

The new sections are authorized by 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, and Texas Human Resources Code §42.042(a) which requires HHSC to adopt

rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §42.042.

§749.4551. Documentation of Health and Safety Requirements.

A child-placing agency must document the following in the kinship foster home's record:

(1) The results of each health inspection or health and safety evaluation;

(2) The results of each fire inspection or fire safety evaluation; and

(3) A copy of the home's emergency preparedness plan, including any subsequent reviews.

§749.4553. Health and Fire Inspections.

(a) A kinship foster home must have either:

(1) A health inspection conducted by the local health authority; or

(2) A health and safety evaluation conducted by the child-placing agency's (CPA's) child placement staff using the Environmental Health Checklist for Kinship Foster Homes form.

(b) A kinship foster home must also have either:

(1) A fire inspection conducted by a state or local fire authority; or

(2) A fire safety evaluation developed and conducted by the CPA's child placement staff.

(c) A kinship foster home must correct any deficiencies documented during any inspection or evaluation and comply with any conditions or restrictions specified by the inspector or evaluator.

§749.4555. Emergency Plans.

(a) A kinship foster home must have a written plan for handling potential disasters and emergencies, including fire and severe weather. The child-placing agency (CPA) that verified the home must annually review and evaluate the plan with all kinship caregivers and kinship foster children in the home. The review of the plan must be provided in the kinship foster child's communication method.

(b) The CPA may develop the emergency plan with the kinship foster family or obtain a copy of the emergency plan the family developed with the Texas Department of Family and Protective Services or Single Source Continuum Contractor.

§749.4557. Fire Safety.

(a) A kinship foster home must have a working smoke detector in the following areas:

(1) The kitchen;

(2) Hallways or open areas outside of sleeping rooms; and

(3) On each level of a home with multiple levels.

(b) The kinship foster home must have one non-expired, operational fire extinguisher that is accessible in the case of emergency.

(c) The kinship foster home must ensure that exits to the home are not blocked.

§749.4559. Animals.

Any animal on the premises of a kinship foster home must not pose a health or safety threat to the kinship foster children.

§749.4561. Weapons, Firearms, Explosive Materials, and Projectiles at a Kinship Foster Home.

(a) If a child-placing agency (CPA) allows weapons, firearms, explosive materials, or projectiles, the CPA must develop and enforce a policy identifying specific precautions to ensure that a kinship foster child does not have unsupervised access to them, including requiring a kinship foster parent to keep them in locked storage when they are not in use.

(b) The CPA must determine that it is appropriate for a specific kinship foster child to use weapons, firearms, explosive materials, or projectiles.

(c) No kinship foster child may use a weapon, firearm, explosive material, or projectile, unless the kinship foster child is directly supervised by an adult knowledgeable about the use of the weapon, firearm, explosive material, or projectile that is to be used by the kinship foster child.

(d) The CPA's policies must require kinship foster parents to notify the CPA if there is a change in the type of or an addition to weapons, firearms, explosive materials, projectiles, or toys that explode or shoot that are on the property where the kinship foster home is located.

(e) The CPA must determine whether it is appropriate for a specific kinship foster child to use a toy that explodes or shoots. The kinship foster child must be supervised when using or being around a toy that explodes or shoots, and the toy must be age-appropriate to the kinship foster child.

(f) Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

§749.4563. Storage of Weapons, Firearms, Explosive Materials, or Projectiles in a Kinship Foster Home.

When determining if these items are stored adequately, the child-placing agency must consider the age, history, emotional maturity, and background of the children in the kinship foster home.

§749.4565. Determining Weapons, Firearms, Explosive Materials, or Projectiles are Present in a Kinship Foster Home.

(a) When a child-placing agency (CPA) completes a kinship foster home screening, the CPA must ask whether weapons, firearms, explosive materials, or projectiles are present in the kinship foster home. If these items are present, the CPA must review the CPA's policies and requirements with the prospective kinship foster parents.

(b) The kinship foster home record must include documentation on the:

(1) Items present in the home; and

(2) Specific precautions the kinship caregivers must take to ensure kinship foster children do not have unsupervised access.

(c) The two-year evaluation of compliance with rules of this chapter must include a discussion of whether the kinship foster home has weapons, firearms, explosive materials, or projectiles, and if so, how these items are stored.

§749.4567. Transporting a Kinship Foster Child in a Vehicle Where Firearms, Explosive Materials, or Projectiles are Present.

(a) A kinship caregiver may transport a kinship foster child in a vehicle where firearms (other than handguns), other weapons, explosive materials, or projectiles are present if:

(1) All firearms are not loaded;

(2) The firearms, other weapons, explosive materials, or projectiles are inaccessible to the kinship foster child; and

(3) Possession of the firearm is legal.

(b) A kinship caregiver may transport a kinship foster child in a vehicle where a handgun is present if:

(1) The handgun is in the possession and control of the kinship caregiver; and

(2) The kinship caregiver is not prohibited by law from carrying a handgun.

§749.4569. Physical Environment of a Kinship Foster Home.

(a) A kinship foster home must ensure that indoor and outdoor space and equipment does not pose a safety risk to kinship foster children.

(b) Kinship caregivers must provide adequate supervision to prevent access to space or equipment that poses a safety risk to a kinship foster child as needed based on the kinship foster child's developmental age, maturity, and service plan restrictions.

§749.4571. Indoor Space: Sleeping Spaces and Sleeping Surfaces.

(a) Unless approved to share by the child placement management staff (CPMS), each kinship foster child must have the child's own:

(1) Sleeping space; and

(2) Sleep surface, which may include a bed, mattress, air mattress, futon, or couch.

(b) Before approving a kinship foster child to share a sleeping space or sleeping surface, the CPMS must determine and document in the kinship foster child's service plan there is no known risk of harm to the kinship foster child by sharing a sleeping space or sleeping surface with the other individual after assessing:

(1) The relationship between the kinship foster child and the individual;

(2) The ages and developmental levels of the kinship foster child and the individual, noting that after the kinship foster child's 18th birthday, the kinship foster child may share a bedroom with another youth who is 16 years of age or older, provided the age difference does not exceed two years;

(3) The behaviors of the kinship foster child and the individual;

(4) Any history of possible sexual trauma or sexually inappropriate behaviors of the kinship foster child and the individual; and

(5) Any other identifiable factors that may affect the appropriateness of the individual and the kinship foster child sharing a bedroom.

§749.4573. Indoor Space: Bathrooms.

A kinship foster home must have at least:

(1) one bathroom that allows for privacy;

(2) one toilet; and

(3) one bathroom sink and one tub or shower that have hot and cold running water.

§749.4575. Nutrition and Food Safety.

(a) Kinship caregivers must provide a kinship foster child with drinking water and food that is served in a safe and sanitary manner.

(b) A kinship home must ensure that all food items are stored in a manner that protects them from contamination, spoiling, and insects and rodents.

§749.4577. Transportation.

(a) Kinship caregivers must secure safe and reliable transportation for a kinship foster child.

(b) Special provisions must be made for transporting non-ambulatory and non-mobile children. When necessary, this may include locks for wheelchairs and hydraulic lifts.

(c) A kinship caregiver must secure each kinship foster child in an infant safety seat, rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the kinship foster child's age, height, and weight and according to the manufacturer's instructions.

§749.4579. Water Safety: Pools, Hot Tubs, and Bodies of Water.

(a) Any door that leads from the home to an area with a swimming pool, hot tub, or body of water must have:

(1) A door alarm; or

(2) A lock that is only accessible and operational by an adult unless:

(A) The state or local fire authority determines that the lock violates the fire code; and

(B) The child-placing agency keeps the fire authority's determination in the kinship foster home record.

(b) The bottom of a swimming pool must be always visible.

(c) Swimming pool chemicals and machinery rooms must be inaccessible to kinship foster children.

§749.4581. Swimming Supervision.

(a) Kinship caregivers must inform each kinship foster child about house rules for the use of a swimming pool, hot tub, or other body of water and appropriate safety precautions.

(b) Supervision and monitoring of safety features must be adequate to protect any kinship foster child from unsupervised access to the swimming pool, hot tub, or other body of water.

(c) Kinship caregivers must ensure that a kinship foster child has access to a lifesaving device when using a swimming pool, hot tub, or body of water.

(d) A personal flotation device (PFD) is a vest or suit designed to keep the wearer afloat in water and prevent drowning. A kinship foster child participating in a swimming activity who is unable to swim must wear a PFD that is U.S. Coast Guard-approved for use by a child that is the correct size for the child.

(e) Kinship caregivers must be able to clearly see all parts of the swimming pool or hot tub when supervising activity in the area.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

## **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

### **CHAPTER 4. RIGHTS AND PROTECTION OF INDIVIDUALS RECEIVING INTELLECTUAL DISABILITY SERVICES**

#### **SUBCHAPTER A. PROTECTED HEALTH INFORMATION**

##### **40 TAC §§4.1 - 4.8**

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Texas Administrative Code (TAC), Title 40, Chapter 4, Subchapter A consisting of §§4.1, concerning Purpose; 4.2, concerning Application; 4.3, concerning Definitions; 4.4, concerning Requirements; 4.5, concerning Regulations and Statutes Governing Confidentiality of Protected Health Information; 4.6, concerning Exhibit; 4.7, concerning References; and 4.8, concerning Distribution.

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

The purpose of the proposal is to repeal Chapter 4, Subchapter A, in its entirety, as the rules are no longer necessary. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, the Department of Aging and Disability Services was abolished September 1, 2017, after all its functions were transferred to HHSC.

The rules reference federal privacy laws, rules, and regulations that are now addressed in the Local Intellectual and Developmental Disability Authority performance contract.

##### **FISCAL NOTE**

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

#### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§4.1. *Purpose.*

§4.2. *Application.*

§4.3. *Definitions.*

§4.4. *Requirements.*

§4.5. *Regulations and Statutes Governing Confidentiality of Protected Health Information.*

§4.6. *Exhibit.*

§4.7. *References.*

§4.8. *Distribution.*

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

Filed with the Office of the Secretary of State on May 22, 2025.

TRD-202501810

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



## CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Texas Administrative Code (TAC), Title 40, Chapter 5 consisting of §§5.1, concerning Purpose; 5.2, concerning Application; 5.3, concerning Definitions; 5.4, concerning Philosophy; 5.5, concerning General Principles; 5.6, concerning Evaluation and Diagnosis; 5.7, concerning Prescribing Parameters; 5.8, concerning Emergency Use of Psychoactive Medication; 5.9, concerning Consent and Patient Education; 5.10, concerning Medication Monitoring; 5.11, concerning Special Populations; 5.12, concerning Quality Improvement; 5.13, concerning References; 5.14, concerning Distribution; 5.401, concerning Purpose; 5.402, concerning Application; 5.403, concerning Definitions; 5.404, concerning General Provisions; 5.405, concerning General Principles for Behavior Therapy Programs; 5.406, concerning Development, Implementation, and Monitoring of Effectiveness of Behavior Therapy Programs; 5.407, concerning Requirement to Obtain Legally Adequate Consent, Consent, or Authorization; 5.408, concerning Use of Restraint; 5.409, concerning Documenting and Reporting Behavior Therapy Programs That Use Highly Restrictive Procedures; 5.411, concerning References; and 5.412, concerning Distribution.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal Chapter 5, in its entirety, as the rules are no longer necessary and not required by statute. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, the Department of Aging and Disability Services was abolished September 1, 2017, after all its functions were transferred to HHSC.

The topics of these rules are required by standard licensing requirements for medical professionals or by the federal conditions of participation developed by the Centers for Medicare and Medicaid Services for intermediate care facilities for individuals with intellectual disabilities.

#### FISCAL NOTE

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

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of

the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

### SUBCHAPTER A. PRESCRIBING OF PSYCHOACTIVE MEDICATION

#### 40 TAC §§5.1 - 5.14

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

- §5.1. *Purpose.*
- §5.2. *Application.*
- §5.3. *Definitions.*
- §5.4. *Philosophy.*
- §5.5. *General Principles.*
- §5.6. *Evaluation and Diagnosis.*
- §5.7. *Prescribing Parameters.*
- §5.8. *Emergency Use of Psychoactive Medication.*
- §5.9. *Consent and Patient Education.*
- §5.10. *Medication Monitoring.*
- §5.11. *Special Populations.*
- §5.12. *Quality Improvement.*
- §5.13. *References.*
- §5.14. *Distribution.*

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

Filed with the Office of the Secretary of State on May 21, 2025.

TRD-202501785

Karen Ray  
Chief Counsel

Department of Aging and Disability Services  
Earliest possible date of adoption: July 6, 2025  
For further information, please call: (512) 221-9021



### SUBCHAPTER I. BEHAVIOR THERAPY IN STATE FACILITIES

#### 40 TAC §§5.401 - 5.409, 5.411, 5.412

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

- §5.401. *Purpose.*
- §5.402. *Application.*
- §5.403. *Definitions.*

§5.404. *General Provisions.*

§5.405. *General Principles for Behavior Therapy Programs.*

§5.406. *Development, Implementation, and Monitoring of Effectiveness of Behavior Therapy Programs.*

§5.407. *Requirement to Obtain Legally Adequate Consent, Consent, or Authorization.*

§5.408. *Use of Restraint.*

§5.409. *Documenting and Reporting Behavior Therapy Programs That Use Highly Restrictive Procedures.*

§5.411. *References.*

§5.412. *Distribution.*

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

Filed with the Office of the Secretary of State on May 21, 2025.

TRD-202501786

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



## CHAPTER 7. DADS ADMINISTRATIVE RESPONSIBILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Texas Administrative Code (TAC), Title 40, Chapter 7 consisting of §§7.1, concerning Purpose; 7.6, concerning Assignment and Use of Pooled Vehicles; 7.9, concerning Material Safety Data Sheets; 7.23, concerning Unauthorized Departures That May Have Unusual Consequences; 7.33, concerning Mail for Staff Residing On Campus; 7.34, concerning Commercial Solicitation on Grounds; 7.51, concerning Purpose; 7.52, concerning Application; 7.53, concerning Definitions; 7.54, concerning Procurement; 7.55, concerning Accountability; 7.56, concerning Provisions for All Contracts; 7.57, concerning Additional Requirements for Specific Contracts; 7.58, concerning Contract Extension or Renewal; 7.60, concerning Protest and Appeal Procedures; 7.61, concerning Contract Monitoring; 7.62, concerning Remedies and Sanctions for All Contracts Except Construction Contracts; 7.63, concerning Negotiation and Mediation; 7.64, concerning References; 7.65, concerning Distribution; 7.159, concerning References; 7.160, concerning Distribution; 7.901, concerning Purpose; 7.902, concerning Applicability; 7.903, concerning Definitions; 7.904, concerning Prerequisites to Suit; 7.905, concerning Sovereign Immunity; 7.906, concerning Notice of Claim of Breach of Contract; 7.907, concerning Agency Counterclaim; 7.908, concerning Request for Voluntary Disclosure of Additional Information; 7.909, concerning Duty to Negotiate; 7.910, concerning Timetable; 7.911, concerning Conduct of Negotiation; 7.912, concerning Settlement Approval Procedures; 7.913, concerning Settlement Agreement; 7.914, concerning Costs of Negotiation; 7.915, concerning Request for Contested Case Hearing; 7.916, concerning Mediation Timetable; 7.917, concerning Conduct of Mediation; 7.918, concerning Agreement to Mediate; 7.919, concerning

Qualifications and Immunity of the Mediator; 7.920, concerning Confidentiality of Mediation and Final Settlement Agreement; 7.921, concerning Costs of Mediation; 7.922, concerning Settlement Approval Procedures; 7.923, concerning Initial Settlement Agreement; 7.924, concerning Final Settlement Agreement; and 7.925, concerning Referral to the State Office of Administrative Hearings.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal Chapter 7, in its entirety, as the rules are no longer necessary. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, the Department of Aging and Disability Services was abolished September 1, 2017, after all its functions were transferred to HHSC.

These rules are duplicative of agency rules located in Title 1 TAC, Chapter 391 and agency policies.

### FISCAL NOTE

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

### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first



five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

### SUBCHAPTER A. STANDARD OPERATING PROCEDURES

#### 40 TAC §§7.1, 7.6, 7.9, 7.23, 7.33, 7.34

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§7.1. *Purpose.*

§7.6. *Assignment and Use of Pooled Vehicles.*

§7.9. *Material Safety Data Sheets.*

§7.23. *Unauthorized Departures That May Have Unusual Consequences.*

§7.33. *Mail for Staff Residing On Campus.*

§7.34. *Commercial Solicitation on Grounds.*

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 May 21, 2025.

TRD-202501787

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



### SUBCHAPTER B. CONTRACTS MANAGEMENT FOR STATE FACILITIES AND CENTRAL OFFICE

#### 40 TAC §§7.51 - 7.58, 7.60 - 7.65

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§7.51. *Purpose.*

§7.52. *Application.*

§7.53. *Definitions.*

§7.54. *Procurement.*

§7.55. *Accountability.*

§7.56. *Provisions for All Contracts.*

§7.57. *Additional Requirements for Specific Contracts.*

§7.58. *Contract Extension or Renewal.*

§7.60. *Protest and Appeal Procedures.*

§7.61. *Contract Monitoring.*

§7.62. *Remedies and Sanctions for All Contracts Except Construction Contracts.*

§7.63. *Negotiation and Mediation.*

§7.64. *References.*

§7.65. *Distribution.*

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

Filed with the Office of the Secretary of State on May 21, 2025.

TRD-202501788

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



### SUBCHAPTER D. PERMANENT IMPROVEMENTS DONATED BY INDIVIDUALS OR COMMUNITY GROUPS

#### 40 TAC §§7.159, §7.160

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§7.159. *References.*

§7.160. *Distribution.*

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

Filed with the Office of the Secretary of State on May 21, 2025.

TRD-202501789  
Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: July 6, 2025  
For further information, please call: (512) 221-9021



## SUBCHAPTER S. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT CLAIMS AGAINST DADS

### DIVISION 1. GENERAL

#### 40 TAC §§7.901 - 7.905

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§7.901. *Purpose.*

§7.902. *Applicability.*

§7.903. *Definitions.*

§7.904. *Prerequisites to Suit.*

§7.905. *Sovereign Immunity.*

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

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Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
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For further information, please call: (512) 221-9021



### DIVISION 2. NEGOTIATION

#### 40 TAC §§7.906 - 7.915

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§7.906. *Notice of Claim of Breach of Contract.*

§7.907. *Agency Counterclaim.*

§7.908. *Request for Voluntary Disclosure of Additional Information.*

§7.909. *Duty to Negotiate.*

§7.910. *Timetable.*

§7.911. *Conduct of Negotiation.*

§7.912. *Settlement Approval Procedures.*

§7.913. *Settlement Agreement.*

§7.914. *Costs of Negotiation.*

§7.915. *Request for Contested Case Hearing.*

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 May 21, 2025.

TRD-202501792  
Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: July 6, 2025  
For further information, please call: (512) 221-9021



### DIVISION 3. MEDIATION

#### 40 TAC §§7.916 - 7.925

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§7.916. *Mediation Timetable.*

§7.917. *Conduct of Mediation.*

§7.918. *Agreement to Mediate.*

§7.919. *Qualifications and Immunity of the Mediator.*

§7.920. *Confidentiality of Mediation and Final Settlement Agreement.*

§7.921. *Costs of Mediation.*

§7.922. *Settlement Approval Procedures.*

§7.923. *Initial Settlement Agreement.*

§7.924. *Final Settlement Agreement.*

§7.925. *Referral to the State Office of Administrative Hearings.*

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 May 21, 2025.

TRD-202501793  
Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: July 6, 2025  
For further information, please call: (512) 221-9021



## CHAPTER 72. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

### SUBCHAPTER L. MOU--CAPACITY ASSESSMENT FOR SELF CARE AND FINANCIAL MANAGEMENT

#### 40 TAC §72.5001

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §72.5001,

concerning Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal Chapter 72, Subchapter L, in its entirety, as the rule is no longer necessary. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, the Department of Aging and Disability Services was abolished September 1, 2017, after all its functions were transferred to HHSC.

This rule was authorized by Texas Health and Safety Code §533.044, which was repealed effective April 1, 2015.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeal does not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public benefit will be removal of an unnecessary rule from the Texas Administrative Code.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to

persons who are required to comply with the proposed repeal because the rule will be removed.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

#### STATUTORY AUTHORITY

The repeal is authorized by 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.

The repeal affects Texas Government Code §524.0151.

*§72.5001. Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management.*

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 May 21, 2025.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 6, 2025

For further information, please call: (512) 221-9021



#### CHAPTER 77. EMPLOYMENT PRACTICES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Texas Administrative Code (TAC), Title 40, Chapter 77 consisting of §§77.1, concerning What is the purpose of this chapter; 77.2, concerning What do the words and terms in this chapter mean; 77.11, concerning What is the training activities program; 77.12, concerning Who is eligible to participate in the training activities program; 77.13, concerning Who should I ask if I want to participate in the training activities program; 77.14, concerning What are my obligations if I participate in the training activities program; 77.15, concerning Can I get a waiver for any of my obligations; 77.16, concerning How do I get a waiver for any of

my obligations; 77.17, concerning What happens if I am placed on corrective action while I am participating in the training activities program; 77.31, concerning What is the education assistance program; 77.32, concerning Am I eligible to participate in the education assistance program; 77.33, concerning Who do I ask if I want to participate in the education assistance program; 77.34, concerning What am I required to do if I participate in the education assistance program; 77.35, concerning What if I cannot work full time and keep my class schedule; 77.36, concerning What type of institution of higher education must I attend; 77.37, concerning What financial assistance is available; 77.38, concerning How often does DHS review my participation in the education assistance program; 77.39, concerning In what situations would DHS cancel my education assistance agreement and my participation in the program; 77.40, concerning If my participation is cancelled, will I have to repay any money to DHS; 77.41, concerning Can I get a waiver, deferment, or reduction of my repayment obligation; 77.42, concerning How do I ask for a waiver, deferment, or reduction; 77.43, concerning If my participation in the education assistance program is cancelled, can I participate in the program in the future; and 77.44, concerning What happens if I am placed on corrective action while I am participating in the education assistance program.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal Chapter 77, in its entirety, as the rules are no longer necessary. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, the Department of Aging and Disability Services was abolished September 1, 2017, after all its functions were transferred to HHSC.

These rules are duplicative of agency rules located in Title 1 TAC, Chapter 396 and agency policies regarding employee training and education.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

#### SUBCHAPTER A. INTRODUCTION

##### 40 TAC §77.1, §77.2

##### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§77.1. *What is the purpose of this chapter?*

§77.2. *What do the words and terms in this chapter mean?*

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 May 21, 2025.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 221-9021



## SUBCHAPTER B. EMPLOYEE TRAINING

### 40 TAC §§77.11 - 77.17

#### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§77.11. *What is the training activities program?*

§77.12. *Who is eligible to participate in the training activities program?*

§77.13. *Who should I ask if I want to participate in the training activities program?*

§77.14. *What are my obligations if I participate in the training activities program?*

§77.15. *Can I get a waiver for any of my obligations?*

§77.16. *How do I get a waiver for any of my obligations?*

§77.17. *What happens if I am placed on corrective action while I am participating in the training activities program?*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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## SUBCHAPTER C. EDUCATION ASSISTANCE PROGRAM

### 40 TAC §§77.31 - 77.44

#### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§77.31. *What is the education assistance program?*

§77.32. *Am I eligible to participate in the education assistance program?*

§77.33. *Who do I ask if I want to participate in the education assistance program?*

§77.34. *What am I required to do if I participate in the education assistance program?*

§77.35. *What if I cannot work full time and keep my class schedule?*

§77.36. *What type of institution of higher education must I attend?*

§77.37. *What financial assistance is available?*

§77.38. *How often does DHS review my participation in the education assistance program?*

§77.39. *In what situations would DHS cancel my education assistance agreement and my participation in the program?*

§77.40. *If my participation is cancelled, will I have to repay any money to DHS?*

§77.41. *Can I get a waiver, deferment, or reduction of my repayment obligation?*

§77.42. *How do I ask for a waiver, deferment, or reduction?*

§77.43. *If my participation in the education assistance program is cancelled, can I participate in the program in the future?*

§77.44. *What happens if I am placed on corrective action while I am participating in the education assistance program?*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 221-9021



## PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

### CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Texas Administrative Code (TAC), Title 40, Chapter 101 consisting of §§101.101, concerning Purpose; 101.103, concerning Legal Authority; 101.105, concerning Definitions; 101.107, concerning Opportunities for Citizen Participation; 101.109, concerning Complaints; 101.111, concerning Cooperation with Other Public Agencies; 101.113, concerning Criminal History Information on Applicants for Employment; 101.115, concerning Use of Criminal History Information in Contracting; 101.117, concerning Fees for Department Publications; 101.119, concerning Gifts and Donations to DARS; 101.121, concerning Qualified Vocational Rehabilitation Counselor (QVRC); 101.201, concerning Purpose; 101.203, concerning Legal Authority; 101.205, concerning Definitions; 101.207, concerning Adoption of Rules; 101.805, concerning Definitions; 101.807, concerning Privacy Policies; 101.809, concerning Confidentiality of Consumer Information in Vocational Rehabilitation Program; 101.811, concerning Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program; 101.813,

concerning Use of Consumer Information in the Deaf and Hard of Hearing Driver Identification Program; 101.1307, concerning Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates; 101.1309, concerning Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information; and 101.1311, concerning Memorandum of Understanding Concerning Coordination of Services to Disabled Persons.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal Chapter 101, Subchapter A, B, D and F, as the rules are no longer necessary. During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, the Department of Assistive and Rehabilitative Services was abolished September 1, 2017, after all its functions were transferred to HHSC and the Department of Family and Protective Services.

These rules are duplicative of agency rules located in Title 1 TAC, Chapters 390 and 391 and agency policies regarding administration and procedures.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner for the Office of Policy and Rules, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R023" in the subject line.

#### SUBCHAPTER A. GENERAL RULES

**40 TAC §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121**

#### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

§101.101. *Purpose.*

§101.103. *Legal Authority.*

§101.105. *Definitions.*

§101.107. *Opportunities for Citizen Participation.*

§101.109. *Complaints.*

§101.111. *Cooperation with Other Public Agencies.*

§101.113. *Criminal History Information on Applicants for Employment.*

§101.115. *Use of Criminal History Information in Contracting.*

§101.117. *Fees for Department Publications.*

§101.119. *Gifts and Donations to DARS.*

§101.121. *Qualified Vocational Rehabilitation Counselor (QVRC).*

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

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Karen Ray  
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Department of Assistive and Rehabilitative Services  
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For further information, please call: (512) 221-9021



## SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

**40 TAC §§101.201, 101.203, 101.205, 101.207**

### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

*§101.201. Purpose.*

*§101.203. Legal Authority.*

*§101.205. Definitions.*

*§101.207. Adoption of Rules.*

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

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## SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY

**40 TAC §§101.805, 101.807, 101.809, 101.811, 101.813**

### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

*§101.805. Definitions.*

*§101.807. Privacy Policies.*

*§101.809. Confidentiality of Consumer Information in Vocational Rehabilitation Program.*

*§101.811. Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program.*

*§101.813. Use of Consumer Information in the Deaf and Hard of Hearing Driver Identification Program.*

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

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## SUBCHAPTER F. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

**40 TAC §§101.1307, 101.1309, 101.1311**

### STATUTORY AUTHORITY

The repeals are authorized by 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.

The repeals affect Texas Government Code §524.0151.

*§101.1307. Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates.*

*§101.1309. Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information.*

*§101.1311. Memorandum of Understanding Concerning Coordination of Services to Disabled Persons.*

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

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