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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the TEC) proposes amendments to TEC rules in Chapter 18. Specifically, the TEC proposes amendments to §18.31, regarding Adjustments to Reporting Thresholds.

Section 571.064(b) of the Government Code requires the TEC to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the TEC's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The TEC first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2025, to apply to contributions and expenditures that occur on or after that date.

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

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

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

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

The amendments are proposed under Texas Government Code §571.062, which authorizes the TEC to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the TEC to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:
Figure 1: 1 TAC §18.31(a)
[~~Figure 1: 1 TAC §18.31(a)~~]
Figure 2: 1 TAC §18.31(a)
[~~Figure 2: 1 TAC §18.31(a)~~]
Figure 3: 1 TAC §18.31(a)
[~~Figure 3: 1 TAC §18.31(a)~~]
Figure 4: 1 TAC §18.31(a)
[~~Figure 4: 1 TAC §18.31(a)~~]
Figure 5: 1 TAC §18.31(a)
[~~Figure 5: 1 TAC §18.31(a)~~]

(b) The changes made by this rule apply only to conduct occurring on or after the effective date of this rule.

(c) The effective date of this rule is January 1, 2025 [~~2024~~].

(d) In this section:

(1) "CEC" means county executive committee;

(2) "DCE" means direct campaign expenditure-only filer;

(3) "GPAC" means general-purpose political committee;

(4) "MPAC" means monthly-filing general-purpose political committee;

(5) "PAC" means political committee;

(6) "PFS" means personal financial statement;

(7) "SPAC" means specific-purpose political committee; and

(8) "TA" means treasurer appointment.

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 July 22, 2024.

TRD-202403254
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8549

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8549, concerning Reimbursement to Hospitals and Physicians Who Dispense Drugs.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment to §355.8549 is to implement House Bill (H.B.) 4888, 88th Legislature, Regular Session, 2023. H.B. 4888 added §32.03117 to the Texas Human Resources Code, concerning Reimbursement for Non-Opioid Treatments.

Texas Human Resources Code §32.03117 requires HHSC to reimburse a Medicaid hospital provider who provides a non-opioid treatment to a Medicaid recipient. Section 32.03117 also requires HHSC by rule to ensure that, to the extent permitted by federal law, a hospital provider who provides outpatient department (OPD) services to a Medicaid recipient is reimbursed separately under Medicaid for any non-opioid treatment provided as part of those services.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8549 adds a new subsection (a), which includes existing language and also changes the word "department" to "Texas Health and Human Services Commission (HHSC)". The proposed amendment also adds new subsection (b) to require HHSC to separately reimburse hospital providers that provide OPD services for any non-opioid treatments, as defined by Texas Human Resources Code §32.03117, when provided as part of an outpatient department service to a Medicaid recipient.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, 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 create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an 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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no cost to implementing the rule amendment to implement Human Resources Code §32.03117, as this is the current practice.

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 and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public benefit will be that Medicaid hospital providers are guaranteed to receive separate reimbursement for non-opioid treatment provided as part of any outpatient department services. Codifying the current practice may reduce confusion.

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 amendment codifies the current practice.

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 mcsrulespubliccomments@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 24R059" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021(c), which requires the executive commissioner to adopt rules necessary for the proper and efficient operation of the medical assistance program; and Texas Human Resources Code §32.03117, which requires the executive commissioner by rule to ensure that, to the extent permitted by federal law, a hospital provider that provides outpatient department services to a medical assistance recipient is reimbursed separately under the medical assistance program for any non-opioid treatment provided as part of those services.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §32.03117.

§355.8549. Reimbursement to Hospitals and Physicians Who Dispense Drugs.

(a) Reimbursements to licensed physicians who dispense their own drugs and to hospitals with outpatient pharmacies are based on actual invoice cost, verifiable by audit, plus a dispensing fee assigned by the Texas Health and Human Services Commission (HHSC) [~~department~~] or the provider's usual and customary charge to the general public, whichever is lower.

(b) HHSC separately reimburses a hospital provider who provides outpatient department (OPD) services for any non-opioid treatment, as defined by Texas Human Resources Code §32.03117, when provided as part of an OPD service to a Medicaid recipient.

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 July 17, 2024.

TRD-202403138
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 438-2910

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TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 151. HOME EQUITY LENDING PROCEDURES

7 TAC §151.1

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) propose amendments to §151.1 (relating to Interpretation Procedures) in 7 TAC Chapter 151, concerning Home Equity Lending Procedures.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on March 29, 2024 (49 TexReg 2095). The commissions received no official comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review. The agencies did not receive any informal precomments on the rule text draft.

Currently, §151.1(d) describes the requirements for formally requesting a home equity interpretation. Proposed amendments to §151.1(d)(1) would specify that any petition for the Finance Commission to issue a home equity interpretation must be sent to the Department of Savings and Mortgage Lending, replacing current language that refers to the Office of Consumer Credit Commissioner. The Department of Savings and Mortgage Lending has the primary responsibility to license and regulate companies providing mortgage loans in Texas. The agencies anticipate that the Department of Savings and Mortgage Lending will take a leading role in coordinating future home equity interpretations.

Wendy Rodriguez (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing, Finance and Human Resources, Office of Consumer Credit Commissioner), and Michael Riepen (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Wendy Rodriguez (Deputy Commissioner, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Karl Hubenthal (Assistant Director of Exam Operations, Office of Consumer Credit Commissioner), and Michael Riepen (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will provide clear guidance for interested parties to file a formal petition for a home equity interpretation.

The agencies do not anticipate any economic cost to persons who are required to comply with the amendments as proposed.

The agencies do not anticipate any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agencies invite comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rule will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would not expand, limit, or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001. The rule changes are also proposed under Texas Government Code, §2001.021(b), which authorizes state agencies to adopt rules prescribing the procedure for submitting petitions for rulemaking.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.1. Interpretation Procedures

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Department of Savings and Mortgage Lending [~~Office of Consumer Credit Commissioner~~] and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

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 July 19, 2024.

TRD-202403202
Matthew Nance
General Counsel, Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 936-7660

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS SUBCHAPTER B. STATE REVIEW AND APPROVAL

19 TAC §67.43

The State Board of Education (SBOE) proposes new §67.43, concerning state review and approval of instructional materials. The new section would address the removal of a set of instructional materials from the lists of approved and rejected instructional materials outlined in Texas Education Code (TEC), §31.022.

BACKGROUND INFORMATION AND JUSTIFICATION: TEC, Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional

materials. House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the January-February meeting, the SBOE approved 19 TAC Chapter 67, State Review and Approval of Instructional Materials, Subchapter B, State Review and Approval, §67.21, Proclamations, Public Notice, and Requests for Instructional Materials for Review; §67.23, Requirements for Publisher Participation in Instructional Materials Review and Approval; and §67.25, Consideration and Approval of Instructional Materials by the State Board of Education, and Subchapter D, Duties of Publishers and Manufacturers, §67.81, Instructional Materials Contracts, and §67.83, Publisher Parent Portal, for second reading and final adoption. At that time, the board expressed a desire to clarify the rules related to the list of approved instructional materials outlined in TEC, §31.022.

Proposed new §67.43 would clarify the conditions under which the SBOE could remove instructional materials from the list of approved instructional materials as well as the list of rejected instructional materials. The proposed new section would also outline the timeline for these decisions and their impact on school district procurement.

The SBOE approved the proposed new section for first reading and filing authorization at its June 28, 2024 meeting.

FISCAL IMPACT: Todd Davis, associate commissioner for instructional strategy, has determined that for the first five years 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: Texas Education Agency (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 a new regulation regarding the removal of a set of instructional materials from the lists of approved and rejected instructional materials outlined in TEC, §31.022.

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 adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Davis 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 clarification to districts and publishers regarding the conditions under which the SBOE could remove instructional materials from the list of approved instructional materials and the use of the entitlements outlined in TEC, §48.307 or §48.308, related to materials removed from the approved instructional materials list. 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 or 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 August 2, 2024, and ends at 5:00 p.m. on September 3, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2024 in accordance with the SBOE board operating policies and procedures. 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 August 2, 2024.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §31.003(a), which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; and TEC, §31.022, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency under TEC, §31.023.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §31.003(a) and §31.022, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023

§67.43. Lists of Approved and Rejected Instructional Materials.

(a) The list of approved instructional materials shall be maintained by the State Board of Education (SBOE).

(b) The SBOE may remove instructional materials from the list of approved instructional materials if:

(1) the Texas Essential Knowledge and Skills (TEKS), Texas Prekindergarten Guidelines (TPG), or applicable English Language Proficiency Standards (ELPS) intended to be covered by the material are revised or a publisher revises the material without the approval of the SBOE in accordance with Texas Education Code (TEC), §31.022(c);

(2) the instructional materials, through a finding of the SBOE, are not compliant with the parent portal standards in §67.83 of this title (relating to Publisher Parent Portal); or

(3) the instructional materials violate any provisions of TEC, Chapter 31.

(c) A publisher of the specific instructional material shall be provided a minimum of 30 days' notice of the proposed removal. A representative of the publisher of the specific instructional material shall be given the opportunity to address the SBOE at the meeting where the SBOE is considering removing that publisher's product from the list of approved materials.

(d) If instructional materials are removed from the list of approved instructional materials, school districts and open-enrollment charter schools may not apply the entitlements outlined in TEC, §48.307 or §48.308, to future purchases or subscriptions of the removed instructional materials.

(e) A school district or an open-enrollment charter school that selects subscription-based instructional materials from the list of approved instructional materials approved under TEC, §31.022 and §31.023, may cancel the subscription and subscribe to a new instructional material on the list of approved instructional materials before the end of the state contract period under TEC, §31.026, if:

(1) the district or charter school has used the instructional material for at least one school year and the Texas Education Agency (TEA) approves the change based on a written request to TEA by the district or charter school that specifies the reasons for changing the instructional material used by the district or charter school; or

(2) the instructional material to which the district or charter school is subscribed is removed from the list of approved instructional materials by the SBOE.

(f) The list of rejected instructional materials shall be maintained by the SBOE.

(g) Instructional materials shall be removed from the list of rejected instructional materials if a publisher submits a revised set of instructional materials for review through the process required by TEC, §31.022 and §31.023, and the SBOE places the revised instructional materials on the list of approved instructional materials.

(h) The SBOE may remove instructional materials from the list of rejected instructional materials if a publisher submits a revised set of instructional materials for review through the process required by TEC, §31.023 and §31.022, and the SBOE takes no action before the end of the calendar year.

(i) This section applies to instructional materials approved by the SBOE after January 1, 2024.

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 July 22, 2024.

TRD-202403223
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 475-1497

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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.27

The State Board of Education (SBOE) proposes an amendment to §74.27, concerning innovative courses and programs. The proposed amendment would correct the criteria for innovative courses to be considered for sunset to align with the language approved by the SBOE in November 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: After the SBOE adopted new rules concerning graduation requirements, the previously approved experimental courses were phased out as of August 31, 1998. Following the adoption of the Texas Essential Knowledge and Skills (TEKS), school districts now submit requests for innovative course approval for courses that do not have TEKS. The process outlined in §74.27 provides authority for the SBOE to approve innovative courses. Each year, Texas Education Agency (TEA) provides the opportunity for school districts and other entities to submit applications for proposed innovative courses. TEA staff works with applicants to fine tune their applications, which are then submitted to the Committee on Instruction for consideration.

At the June 2023 meeting, the Committee on Instruction discussed an amendment to §74.27 to add a provision for the sunset of innovative courses that meet certain criteria. The board approved for first reading and filing authorization the proposed amendment to §74.27 at its August-September 2023 meeting. At the November 2023 SBOE meeting, the board approved for second reading and final adoption the proposed amendment to §74.27, which included as a criteria for consideration for sunset a provision that a course must have been approved for at least three years and meet at least one additional criteria. When TEA staff filed the rule as adopted with the *Texas Register,* the filing did not include the provision that a course must have been approved for at least three years and meet at least one additional criteria to be considered for sunset. The amendment became effective February 18, 2024.

In order to correct the error made by TEA, the proposed amendment would correct the criteria for innovative courses to be considered for sunset to align with the language approved by the SBOE in November 2023.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 28, 2024 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that 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 limiting the scope of innovative courses considered by criteria listed in §74.27(a)(9) to those that have been approved for at least three years.

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 correct the criteria for innovative courses to be considered for sunset to align with the language approved by the SBOE to avoid confusion. 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 or 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 August 2, 2024, and ends at 5:00 p.m. on September 3, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2024 in accordance with the SBOE board operating policies and procedures. 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 August 2, 2024.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §28.002(f), which authorizes local school districts to offer courses in addition to those in the required curriculum for local credit and requires the State Board of Education to be flexible in approving a course for credit for high school graduation.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.002(f).

§74.27. Innovative Courses and Programs.

(a) A school district may offer innovative courses to enable students to master knowledge, skills, and competencies not included in the essential knowledge and skills of the required curriculum.

(1) The State Board of Education (SBOE) may approve discipline-based courses in the foundation or enrichment curriculum and courses that do not fall within any of the subject areas listed in the foundation and enrichment curricula when the applying school district or organization demonstrates that the proposed course is academically rigorous and addresses documented student needs.

(2) Applications shall not be approved if the proposed course significantly duplicates the content of a Texas Essential Knowledge and Skills (TEKS)-based course or can reasonably be taught within an existing TEKS-based course.

(3) To request approval from the SBOE, the applying school district or organization must submit a request for approval at least six months before planned implementation that includes:

(A) a description of the course and its essential knowledge and skills;

(B) the rationale and justification for the request in terms of student need;

(C) data that demonstrates successful piloting of the course in Texas;

(D) a description of activities, major resources, and materials to be used;

(E) the methods of evaluating student outcomes;

(F) the qualifications of the teacher;

(G) any training required in order to teach the course and any associated costs;

(H) the amount of credit requested; and

(I) a copy of or electronic access to any recommended instructional resources for the course.

(4) To request approval for a career and technical education innovative course, the applying school district or organization must submit with its request for approval evidence that the course is aligned with state and/or regional labor market data.

(5) To request approval of a new innovative course, the applying school district or organization must submit with its request for approval evidence that the course has been successfully piloted in its entirety in at least one school in the state of Texas.

(6) The requirements of paragraphs (3)(C) and (5) of this subsection do not apply to the consideration of a course developed to support a program of study in career and technical education.

(7) Newly approved innovative courses shall be approved for a period of three years, and courses approved for renewal shall be approved for a period of five years.

(8) With the approval of the local board of trustees, a school district may offer, without changes or deletions to content, any state-approved innovative course.

(9) Texas Education Agency shall review all approved innovative courses once every two years and provide for consideration for sunset a list of innovative courses that have been approved as an innovative course for at least three years and meet one of the following criteria:

(A) zero enrollment for the previous two years;

(B) average enrollment of less than 100 students statewide for the previous three years;

(C) student enrollment at an average of fewer than 20 districts or charter schools statewide for the previous three years;

(D) duplicative of another innovative or TEKS-based course; or

(E) approved for implementation as a TEKS-based course.

(b) An ethnic studies course that has been approved by the SBOE as an innovative course shall be considered by the SBOE at a subsequent meeting for inclusion in the TEKS.

(1) Only comprehensive ethnic studies courses in Native American studies, Latino studies, African American studies, and/or Asian Pacific Islander studies, inclusive of history, government, economics, civic engagement, culture, and science and technology, shall be considered by the SBOE.

(2) The chair of the Committee on Instruction, in accordance with SBOE Operating Rule 2.5(b), shall collaborate with the board chair to place the item on the next available Committee on Instruction agenda following SBOE approval of the innovative course.

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 July 22, 2024.

TRD-202403212
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 475-1497

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CHAPTER 120. OTHER TEXAS ESSENTIAL KNOWLEDGE AND SKILLS

SUBCHAPTER B. ENGLISH LANGUAGE PROFICIENCY STANDARDS

19 TAC §120.20, §120.21

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §120.20 and 19 TAC §120.21 are not included in the print version of the Texas Register. The figures are available in the on-line version of the August 2, 2024, issue of the Texas Register.)

The State Board of Education (SBOE) proposes new §120.20 and §120.21, concerning English language proficiency standards (ELPS). The proposed new sections would relocate the ELPS from 19 TAC §74.4 and include updates to ensure the standards remain current and comply with federal requirements.

BACKGROUND INFORMATION AND JUSTIFICATION: In 1998, standards for English as a second language (ESL) for students in Kindergarten-Grade 12 were adopted as part of 19 TAC Chapter 128, Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language. In a subsequent Title III monitoring visit, the U.S. Department of Education (USDE) indicated that there was insufficient evidence demonstrating that the ESL standards outlined in 19 TAC Chapter 128 were aligned to state academic content and achievement standards in mathematics, as required by the No Child Left Behind Act (NCLB), §2113(b)(2). In November 2007, the SBOE adopted the ELPS as part of 19 TAC Chapter 74, Curriculum Requirements, to comply with NCLB requirements. The adopted ELPS in 19 TAC §74.4 clarified that state standards in English language acquisition must be implemented as an integral part of the instruction in each foundation and enrichment subject. Additionally, English language proficiency levels of beginning, intermediate, advanced, and advanced high in the domains of listening, speaking, reading, and writing were established as part of the ELPS, as required by NCLB. The superseded second language acquisition standards in 19 TAC Chapter 128 were also repealed in September 2008 during the process of revising the Texas Essential Knowledge and Skills (TEKS) in 19 TAC Chapters 110 and 128.

The SBOE began review and revision of the ELPS in 2019, in accordance with the SBOE's approved TEKS and instructional materials review schedule. Applications to serve on ELPS review work groups were posted on the Texas Education Agency (TEA) website in December 2018, and TEA distributed a survey to collect information from educators regarding the current ELPS. Work groups were convened in March, May, August, September, and October 2019. In September 2019, the USDE indicated that Texas only partially met the requirements of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, and requested additional evidence that the ELPS are aligned to the state's academic content standards and contain language proficiency expectations needed for emergent bilingual students to demonstrate achievement of the state academic standards appropriate to each grade level/grade band in at least reading language arts, mathematics, and science.

In response to feedback from work group members and the USDE, TEA staff convened a panel of experts in second language acquisition from Texas institutions of higher education to complete an analysis of the work group recommendations and current research on English language acquisition. Based on the panel's findings and direction from the SBOE, TEA executed personal services contracts with the panel members and a representative of an education service center to prepare a draft of revisions to the ELPS. Text of the draft ELPS completed by the writers' panel was presented to the SBOE at the June 2023 SBOE meeting.

Applications to serve on the 2023-2024 ELPS review work groups were collected by TEA from June 2023 through January 2024. TEA staff provided SBOE members with applications for approval to serve on ELPS work groups in July, September, and December 2023 and January 2024. ELPS review work groups were convened in August, September, and November 2023 and in March 2024 with the charge of reviewing and revising the expert panel's draft. In April 2024, the SBOE held a discussion on the proposed new ELPS, and in May and June 2024 TEA convened a final work group to complete the recommendations for the new ELPS.

The new sections would propose new ELPS for implementation in the 2026-2027 school year. To make the ELPS easier for the public to locate and to improve organization of the standards, it is recommended that the standards be moved from 19 TAC §74.4 to 19 TAC Chapter 120, Subchapter B.

The SBOE approved the proposed new sections for first reading and filing authorization at its June 28, 2024 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect (2024-2028), there will be fiscal

implications to state government. For fiscal year 2024, the estimated cost to TEA to reimburse committee members for travel to review and revise the ELPS is $50,000. There will be implications for TEA if the state develops professional development to help teachers and administrators understand the revised ELPS.

There may be fiscal implications for school districts and charter schools to implement the proposed new ELPS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

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 by requiring new, more specific, ELPS to be taught by school districts and charter schools.

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. 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 better align the ELPS for second language acquisition to ensure the standards are current and comply with federal requirements. 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 or 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 August 2, 2024, and ends at 5:00 p.m. on September 3, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2024 in accordance with the SBOE board operating policies and procedures. 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 August 2, 2024.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §29.051, which establishes bilingual education and special language programs in public schools and provides supplemental financial assistance to help school districts meet the extra costs of the programs.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002(a), and 29.051.

§120.20. English Language Proficiency Standards, Kindergarten-Grade 3, Adopted 2024.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(b) General requirements. In fulfilling the requirements of this section, school districts and charter schools shall:

(1) identify the student's English language proficiency levels in the domains of listening, speaking, reading, and writing in accordance with the proficiency level descriptors for the pre-production, beginning, intermediate, high intermediate, and advanced levels delineated in subsection (e) of this section;

(2) provide instruction in the knowledge and skills of the foundation and enrichment curriculum in a manner that is linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum;

(3) provide content-based instruction including the cross-curricular second language acquisition essential knowledge and skills in subsection (d) of this section in a manner that is linguistically accommodated to help the student acquire English language proficiency; and

(4) provide intensive and ongoing foundational second language acquisition instruction to emergent bilingual (EB) students in Kindergarten-Grade 12 who are at the pre-production, beginning, or intermediate level of English language proficiency in listening, speaking, reading, or writing as determined by the state's English language proficiency assessment system. These EB students require focused, targeted, and systematic second language acquisition instruction to provide them with the foundation of English language necessary to support content-based instruction and accelerated learning of English.

(c) Introduction.

(1) The English language proficiency standards (ELPS) outline student expectations and proficiency level descriptors for EB students in English. The ELPS are organized across four language domains: listening, speaking, reading, and writing.

(2) Language acquisition is a complex process that consists of several interrelated components, including phonetics, phonology, semantics, syntax, morphology, and pragmatics. As students develop proficiency in these language structures, they are able to make connections between their primary language and English.

(3) Classroom contexts foster social and academic registers, which are types of language appropriate for a situation or setting, to support language proficiency. Informal (social) language consists of English needed for students to effectively interact, exchange ideas, and engage in various settings and contexts. Formal (academic) language consists of oral and written language used to build knowledge, participate in content-specific discourse, and process complex academic material found in formal school settings and interactions.

(4) The progression of skills in the four language domains are developed simultaneously and can be divided into two categories: receptive skills and expressive skills. Listening and reading are the receptive (input) skills. Students' development in receptive skills is necessary for comprehension and attainment of the English language and content. Speaking and writing are the expressive (output) skills. Students' ability to express and share their personal ideas and content knowledge allow teachers the opportunity to check for understanding and adjust instruction. Effective content-based language instruction involves engaging EB students in scaffolded opportunities to listen, speak, read, and write at their current levels of proficiency while gradually increasing linguistic complexity.

(5) In order for EB students to be successful, educators must create an environment that welcomes and encourages students to leverage their unique cultural and linguistic experiences as they develop English language skills and learn academic content. Educators must cultivate an approach that integrates students' and their families' funds of knowledge into the classroom instructional practices. Culturally and linguistically sustaining practices leverage and celebrate students' cultural heritage and backgrounds while elevating their cultural and linguistic identities. Teaching and learning cognates that connect both (or multiple) languages can also construct bridges between languages and increase confidence as English language acquisition progresses.

(6) The ELPS student expectations are the knowledge and skills students must demonstrate. They indicate what students should know and be able to do in order to meet academic content standards. Proficiency level descriptors describe behaviors EB students exhibit across five proficiency levels as they acquire English. EB students may exhibit different proficiency levels within and across the domains of listening, speaking, reading, and writing.

(7) The ELPS demonstrate an asset-based approach to address the affective, linguistic, and cognitive needs of EB students in accordance with §89.1210(b) of this title (relating to Program Content and Design) as follows:

(A) acknowledge and leverage the existing funds of knowledge students possess, including linguistic repertoire, cultural heritage, and background knowledge;

(B) demonstrate targeted and intentional academic language skills to ensure content-area teachers are able to accurately evaluate the abilities of EB students and scaffold toward increasingly complex English students hear, speak, and are expected to read and write; and

(C) provide an exact and incremental measure of the stages of English language acquisition with attention to the fact that EB students at all levels of proficiency can engage in cognitively demanding tasks and master the required essential knowledge and skills with appropriate language support.

(8) The proficiency level descriptors are organized into general proficiency level descriptors and content-area proficiency level descriptors. General proficiency level descriptors are descriptions of a broad scope of student behaviors that can be observed in a variety of educational settings and across content areas. Content-area proficiency level descriptors describe student behaviors and language associated with discipline-specific learning in English language arts and reading, mathematics, science, and social studies.

(d) Cross-curricular English language acquisition student expectations.

(1) Student expectations--listening. The EB student listens to a variety of speakers, including teachers, peers, and multimedia, to gain an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels in listening. The student is expected to:

(A) distinguish sounds and intonation patterns by responding orally, in writing, or with gestures;

(B) demonstrate an understanding of content-area vocabulary when heard during formal and informal classroom interactions by responding with gestures or images, orally, or in writing;

(C) follow oral directions with accuracy;

(D) use context to construct the meaning of descriptive language, words with multiple meanings, register, or figurative language such as idiomatic expressions heard during formal and informal classroom interactions;

(E) demonstrate listening comprehension from information presented orally during formal and informal classroom interactions by recalling, retelling, responding, or asking for clarification or additional details; and

(F) derive meaning from a variety of auditory multimedia sources to build and reinforce concepts and language acquisition.

(2) Student expectations--speaking. The EB student speaks using a variety of language structures for a variety of purposes with an awareness of different language registers (formal/informal) using vocabulary with increasing accuracy and fluency in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency level of English language acquisition in speaking. The student is expected to:

(A) produce sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce words with accuracy;

(B) speak using content-area vocabulary during formal and informal classroom interactions to demonstrate acquisition of new words and high-frequency words;

(C) speak using a variety of language and grammatical structures, sentence lengths and types, and connecting words;

(D) speak using appropriate register to convey a message during formal and informal classroom interactions with accuracy and fluency;

(E) narrate, describe, or explain information or persuade orally with increasing specificity and detail during formal and informal classroom interactions; and

(F) restate, ask questions about, or respond to information during formal and informal classroom interactions.

(3) Student expectations--reading. The EB student reads a variety of texts for different purposes with an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in reading. For Kinder-

garten and Grade 1, certain student expectations apply to text read aloud for students not yet at the stage of decoding written text. The student is expected to:

(A) demonstrate awareness of print concepts and directionality of reading as left to right and top to bottom;

(B) decode words using relationships between sounds and letters;

(C) use high-frequency words, cognates, and content-area vocabulary to comprehend written classroom materials;

(D) use context to construct the meaning of figurative language such as idiomatic expressions, descriptive language, and words with multiple meanings to comprehend classroom materials;

(E) use pre-reading strategies, including previewing text features, connecting to prior knowledge, organizing ideas, and making predictions, to develop comprehension;

(F) derive meaning from and demonstrate comprehension of content-area texts using visual, contextual, and linguistic supports;

(G) demonstrate reading comprehension of content-area texts by making connections, retelling, or responding to questions; and

(H) read with fluency and demonstrate comprehension of content-area text.

(4) Student expectations--writing. The EB student writes using a variety of language structures with increasing accuracy to effectively address a variety of purposes (formal and informal) and audiences in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in writing. For Kindergarten and Grade 1, certain student expectations do not apply until the student has reached the proficiency level of generating original written text using a standard writing system. The student is expected to:

(A) apply relationships between sounds and letters of the English language to represent sounds when writing;

(B) spell words following conventional spelling patterns and rules;

(C) write using high-frequency words and content-area vocabulary;

(D) write using a variety of grade-appropriate sentence lengths and types and connecting words;

(E) write formal or informal text using conventions such as capitalization and punctuation and grammatical structures such as subject-verb agreement and verb tense; and

(F) write to narrate, describe, explain, respond, or persuade with detail in the content areas.

(e) Proficiency level descriptors.

(1) The following five proficiency levels describe students' progress in English language acquisition.

(A) Pre-production. The pre-production level, also known as the silent period, is the early stage of English language acquisition when receptive language is developing. Students develop comprehension when highly scaffolded instruction and linguistic support are provided. Student responses are mostly non-verbal.

(B) Beginning. The beginning level is characterized by speech emergence (expressive language) using one word or two-to-three-word phrases. Students at this level require highly scaffolded instruction and linguistic support. Students at this level begin to consistently use present tense verbs and repeat keywords and familiar phrases when engaging in formal and informal interactions.

(C) Intermediate. The intermediate level is characterized by the ability to use receptive and expressive language with demonstrated literal comprehension. Students at this level need moderately scaffolded instruction and linguistic support. Additional visual and linguistic support is needed to understand unfamiliar or abstract concepts such as figurative language, humor, and cultural or societal references. Students at this level begin to consistently use short phrases and simple sentences or ask short questions to demonstrate comprehension during formal and informal interactions.

(D) High intermediate. Students at the high intermediate level begin to consistently use a variety of sentence types, express opinions, share thoughts, and ask for clarification. Students at this level have an increased level of literal and abstract comprehension. Students may need minimal scaffolded instruction and linguistic support to engage in formal and informal classroom interactions.

(E) Advanced. The advanced level is characterized by the ability of students to engage in formal and informal classroom interactions with little to no linguistic support. Students at this level engage in discourse using content-area vocabulary and a variety of grammatical structures with increasing accuracy.

(2) The Kindergarten-Grade 3 proficiency level descriptors are described in the figure provided in this paragraph.
Figure: 19 TAC §120.20(e)(2)

§120.21. English Language Proficiency Standards, Grades 4-12, Adopted 2024.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(b) General requirements. In fulfilling the requirements of this section, school districts and charter schools shall:

(1) identify the student's English language proficiency levels in the domains of listening, speaking, reading, and writing in accordance with the proficiency level descriptors for the pre-production, beginning, intermediate, high intermediate, and advanced levels delineated in subsection (e) of this section;

(2) provide instruction in the knowledge and skills of the foundation and enrichment curriculum in a manner that is linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum;

(3) provide content-based instruction including the cross-curricular second language acquisition essential knowledge and skills in subsection (d) of this section in a manner that is linguistically accommodated to help the student acquire English language proficiency; and

(4) provide intensive and ongoing foundational second language acquisition instruction to emergent bilingual (EB) students in Kindergarten-Grade 12 who are at the pre-production, beginning, or intermediate level of English language proficiency in listening, speaking, reading, or writing as determined by the state's English language proficiency assessment system. These EB students require focused, targeted, and systematic second language acquisition instruction to provide them with the foundation of English language necessary to support content-based instruction and accelerated learning of English.

(c) Introduction.

(1) The English language proficiency standards (ELPS) outline student expectations and proficiency level descriptors for EB students in English. The ELPS are organized across four language domains: listening, speaking, reading, and writing.

(2) Language acquisition is a complex process that consists of several interrelated components, including phonetics, phonology, semantics, syntax, morphology, and pragmatics. As students develop proficiency in these language structures, they are able to make connections between their primary language and English.

(3) Classroom contexts foster social and academic registers, which are types of language appropriate for a situation or setting, to support language proficiency. Informal (social) language consists of English needed for students to effectively interact, exchange ideas, and engage in various settings and contexts. Formal (academic) language consists of oral and written language used to build knowledge, participate in content-specific discourse, and process complex academic material found in formal school settings and interactions.

(4) The progression of skills in the four language domains are developed simultaneously and can be divided into two categories: receptive skills and expressive skills. Listening and reading are the receptive (input) skills. Students' development in receptive skills is necessary for comprehension and attainment of the English language and content. Speaking and writing are the expressive (output) skills. Students' ability to express and share their personal ideas and content knowledge allow teachers the opportunity to check for understanding and adjust instruction. Effective content-based language instruction involves engaging EB students in scaffolded opportunities to listen, speak, read, and write at their current levels of proficiency while gradually increasing linguistic complexity.

(5) In order for EB students to be successful, educators must create an environment that welcomes and encourages students to leverage their unique cultural and linguistic experiences as they develop English language skills and learn academic content. Educators must cultivate an approach that integrates students' and their families' funds of knowledge into the classroom instructional practices. Culturally and linguistically sustaining practices leverage and celebrate students' cultural heritage and backgrounds while elevating their cultural and linguistic identities. Teaching and learning cognates that connect both (or multiple) languages can also construct bridges between languages and increase confidence as English language acquisition progresses.

(6) The ELPS student expectations are the knowledge and skills students must demonstrate. They indicate what students should know and be able to do in order to meet academic content standards. Proficiency level descriptors describe behaviors EB students exhibit across five proficiency levels as they acquire English. EB students may exhibit different proficiency levels within and across the domains of listening, speaking, reading, and writing.

(7) The ELPS demonstrate an asset-based approach to address the affective, linguistic, and cognitive needs of EB students in accordance with §89.1210(b) of this title (relating to Program Content and Design) as follows:

(A) acknowledge and leverage the existing funds of knowledge students possess, including linguistic repertoire, cultural heritage, and background knowledge;

(B) demonstrate targeted and intentional academic language skills to ensure content-area teachers are able to accurately evaluate the abilities of EB students and scaffold toward increasingly complex English students hear, speak, and are expected to read and write; and

(C) provide an exact and incremental measure of the stages of English language acquisition with attention to the fact that EB students at all levels of proficiency can engage in cognitively demanding tasks and master the required essential knowledge and skills with appropriate language support.

(8) The proficiency level descriptors are organized into general proficiency level descriptors and content-area proficiency level descriptors. General proficiency level descriptors are descriptions of a broad scope of student behaviors that can be observed in a variety of educational settings and across content areas. Content-area proficiency level descriptors describe student behaviors and language associated with discipline-specific learning in English language arts and reading, mathematics, science, and social studies.

(d) Cross-curricular English language acquisition student expectations.

(1) Student expectations--listening. The EB student listens to a variety of speakers, including teachers, peers, and multimedia, to gain an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels in listening. The student is expected to:

(A) distinguish sounds and intonation patterns by responding with gestures or images, orally, or in writing;

(B) use contextual factors or word analysis such as cognates, Greek and Latin prefixes, suffixes, and roots to comprehend content-specific vocabulary when heard during formal and informal classroom interactions by responding with gestures or images, orally, or in writing;

(C) respond with accuracy to oral directions, instructions, and requests;

(D) use context to construct the meaning of descriptive language, words with multiple meanings, register, and figurative language such as idiomatic expressions heard during formal and informal classroom interactions;

(E) demonstrate listening comprehension from information presented orally during formal and informal classroom interactions by restating, responding, paraphrasing, summarizing, or asking for clarification or additional details; and

(F) derive meaning from a variety of auditory multimedia sources to build and reinforce concepts and language acquisition.

(2) Student expectations--speaking. The EB student speaks using a variety of language structures for a variety of purposes with an awareness of different language registers (formal/informal) using vocabulary with increasing accuracy and fluency in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency level of English language acquisition in speaking. The student is expected to:

(A) pronounce words, including high-frequency words, cognates, and increasingly complex syllable types, with accuracy;

(B) speak using content-area vocabulary during formal and informal classroom interactions to demonstrate acquisition of new words and high-frequency words;

(C) speak using a variety of language and grammatical structures, sentence lengths and types, and transition words;

(D) speak using appropriate register to convey a message during formal and informal classroom interactions with accuracy and fluency;

(E) narrate, describe, explain, justify, discuss, elaborate, or evaluate orally with increasing specificity and detail in academic context or discourse; and

(F) restate, ask questions about, or respond to information during formal and informal classroom interactions.

(3) Student expectations--reading. The EB student reads a variety of texts for different purposes with an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in reading. The student is expected to:

(A) demonstrate awareness of print concepts and directionality of reading as left to right and top to bottom;

(B) decode words using the relationships between sounds and letters and identify syllable patterns, cognates, affixes, roots, or base words;

(C) use high-frequency words, contextual factors, and word analysis such as Greek and Latin prefixes, suffixes, and roots and cognates to comprehend content-area vocabulary in text;

(D) use context to construct the meaning of figurative language such as idiomatic expressions, descriptive language, and words with multiple meanings to comprehend a variety of text;

(E) use pre-reading strategies, including previewing the text features, connecting to prior knowledge, organizing ideas, and making predictions to develop comprehension;

(F) derive meaning from and demonstrate comprehension of content-area texts using visual, contextual, and linguistic supports;

(G) demonstrate reading comprehension of content-area texts by retelling, paraphrasing, summarizing, and responding to questions; and

(H) read with fluency and prosody and demonstrate comprehension of content-area text.

(4) Student expectations--writing. The EB student writes using a variety of language structures with increasing accuracy to effectively address a variety of purposes (formal and informal) and audiences in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in writing. The student is expected to:

(A) apply relationships between sounds and letters of the English language to represent sounds when writing;

(B) write text following conventional spelling patterns and rules;

(C) write using a combination of high-frequency words and content-area vocabulary;

(D) write content-area texts using a variety of sentence lengths and types and transition words;

(E) write content-area specific text using conventions such as capitalization, punctuation, and abbreviations and grammatical structures such as subject-verb agreement, verb tense, possessive case, and contractions; and

(F) write to narrate, describe, explain, respond, or justify with supporting details and evidence using appropriate content, style, register, and conventions for specific purpose and audience.

(e) Proficiency level descriptors.

(1) The following five proficiency levels describe students' progress in English language acquisition.

(A) Pre-production. The pre-production level, also known as the silent period, is the early stage of English language acquisition when receptive language is developing. Students develop comprehension when highly scaffolded instruction and linguistic support are provided. Student responses are mostly non-verbal.

(B) Beginning. The beginning level is characterized by speech emergence (expressive language) using one word or two-to-three-word phrases. Students at this level require highly scaffolded instruction and linguistic support. Students at this level begin to consistently use present tense verbs and repeat keywords and familiar phrases when engaging in formal and informal interactions.

(C) Intermediate. The intermediate level is characterized by the ability to use receptive and expressive language with demonstrated literal comprehension. Students at this level need moderately scaffolded instruction and linguistic support. Additional visual and linguistic support is needed to understand unfamiliar or abstract concepts such as figurative language, humor, and cultural or societal references. Students at this level begin to consistently use short phrases and simple sentences or ask short questions to demonstrate comprehension during formal and informal interactions.

(D) High intermediate. Students at the high intermediate level begin to consistently use a variety of sentence types, express opinions, share thoughts, and ask for clarification. Students at this level have an increased level of literal and abstract comprehension. Students may need minimal scaffolded instruction and linguistic support to engage in formal and informal classroom interactions.

(E) Advanced. The advanced level is characterized by the ability of students to engage in formal and informal classroom interactions with little to no linguistic support. Students at this level engage in discourse using content-area vocabulary and a variety of grammatical structures with increasing accuracy.

(2) The Grades 4-12 proficiency level descriptors are described in the figure provided in this paragraph.
Figure: 19 TAC §120.21(e)(2)

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

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

SUBCHAPTER J. HOSPITALITY AND TOURISM

19 TAC §127.482

The State Board of Education (SBOE) proposes an amendment to §127.482, concerning Texas Essential Knowledge and Skills for career development and career and technical education. The proposed amendment would make technical adjustments to prerequisites to align with the recently revised career and technical education (CTE) programs of study.

BACKGROUND INFORMATION AND JUSTIFICATION: The federal *Strengthening Career and Technical Education for the 21st Century Act,* commonly referred to as Perkins V, requires states that receive federal CTE funds to align CTE programs of study to high-wage, in-demand, and high-skill occupations. In fall 2023, the Texas Education Agency (TEA) engaged members of the workforce, secondary education, and higher education to advise on the development and refresh of programs of study, which include coherent course sequences, industry-based certifications, and work-based learning opportunities to ensure students are prepared for high-wage, in-demand, and high-skill careers in Texas.

The proposed amendment would align language related to prerequisites to ensure alignment with the refreshed programs of study.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 28, 2024 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that 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 expand and limit existing regulations by adjusting the options for prerequisites and corequisites for some courses.

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 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 better align language related to prerequisites with the refreshed CTE programs of study and eliminate confusion. 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 or 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 August 2, 2024, and ends at 5:00 p.m. on September 3, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2024 in accordance with the SBOE board operating policies and procedures. 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 August 2, 2024.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.482. Food Science (One Credit), Adopted 2021.

(a) (No change.)

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: one credit in biology, one credit in chemistry, and at least one credit in a Level 2 or higher course from the hospitality and tourism or agriculture, food, and natural resources career clusters [~~cluster~~]. Recommended prerequisite: Principles of Hospitality and Tourism. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes amendments to §§130.30, 130.136, 130.137, 130.138, 130.143, 130.144, 130.445, and 130.446, concerning Texas Essential Knowledge and Skills for career and technical education. The proposed amendments would make technical adjustments to course titles, prerequisites, and corequisites to align with the recently revised career and technical education (CTE) programs of study.

BACKGROUND INFORMATION AND JUSTIFICATION: The federal *Strengthening Career and Technical Education for the 21st Century Act,* commonly referred to as Perkins V, requires states that receive federal CTE funds to align CTE programs of study to high-wage, in-demand, and high-skill occupations. In fall 2023, the Texas Education Agency (TEA) engaged members of the workforce, secondary education, and higher education to advise on the development and refresh of programs of study, which include coherent course sequences, industry-based certifications, and work-based learning opportunities, to ensure students are prepared for high-wage, in-demand, and high-skill careers in Texas.

The proposed amendments would align existing CTE course titles and language related to prerequisites and corequisites to ensure alignment with the refreshed programs of study.

The SBOE approved the proposed amendments for first reading and filing authorization at its June 28, 2024 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that 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 expand and limit existing regulations by adjusting the options for prerequisites and corequisites for some courses.

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 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 better align existing course titles and language related to prerequisites and corequisites with the refreshed CTE programs of study. It would also ensure students have access to appropriate corequisite courses, update titles to be accurate and consistent with courses in other programs of study, and eliminate confusion. 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 or 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 August 2, 2024, and ends at 5:00 p.m. on September 3, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2024 in accordance with the SBOE board operating policies and procedures. 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 August 2, 2024.

SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

19 TAC §130.30

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§130.30. Agricultural Laboratory and Field Experience (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12 as a corequisite course for students participating in a coherent sequence of career and technical education courses in the Agriculture, Food, and Natural Resources or Energy career clusters [~~Career Cluster~~]. This course provides an enhancement opportunity for students to develop the additional skills necessary to pursue industry certification.

(1) Recommended prerequisite: a minimum of one credit from a course [~~the courses~~] in the Agriculture, Food, and Natural Resources or Energy career clusters [~~Career Cluster~~].

(2) Corequisite: this [~~any course in the Agriculture, Food, and Natural Resources Career Cluster, excluding Principles of Agriculture, Food, and Natural Resources. This~~] course must be taken concurrently with a corequisite course from the Agriculture, Food, and Natural Resources or Energy career clusters [~~Career Cluster~~] and may not be taken as a stand-alone course. The following courses are permitted as corequisites:

(A) Agribusiness Management and Marketing;

(B) Livestock Production;

(C) Veterinary Medical Applications;

(D) Food Technology and Safety;

(E) Food Processing;

(F) Wildlife, Fisheries, and Ecology Management;

(G) Forestry and Woodland Ecosystems;

(H) Range Ecology and Management;

(I) Floral Design;

(J) Horticultural Science;

(K) Greenhouse Operation and Production;

(L) Agricultural Mechanics and Metal Technologies;

(M) Agricultural Structures Design and Fabrication;

(N) Agricultural Equipment Design and Fabrication;

(O) Agricultural Power Systems;

(P) Oil and Gas Production I;

(Q) Oil and Gas Production II;

(R) Energy and Natural Resource Technology; and

(S) Advanced Energy and Natural Resource Technology.

(3) Districts are encouraged to offer this lab in a consecutive block with the corequisite course to allow students sufficient time to master the content of both courses. Students shall be awarded one credit for successful completion of this course.

(b) - (c) (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
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For further information, please call: (512) 475-1497

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SUBCHAPTER D. BUSINESS MANAGEMENT AND ADMINISTRATION

19 TAC §§130.136 - 130.138, 130.143, 130.144

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§130.136. Foundations of Business Communication and Technologies [~~Business Information Management I~~] (One Credit), Adopted 2015.

(a) (No change.)

(b) Introduction.

(1) - (2) (No change.)

(3) In Foundations of Business Communication and Technologies [~~Business Information Management I~~], students implement personal and interpersonal skills to strengthen individual performance in the workplace and in society and make a successful transition to the workforce and postsecondary education. Students apply technical skills to address business applications of emerging technologies, create word-processing documents, develop a spreadsheet, formulate a database, and make an electronic presentation using appropriate software.

(4) - (5) (No change.)

(c) (No change.)

§130.137. Business Communication and Technologies [~~Business Information Management II~~] (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Foundations of Business Communication and Technologies [~~Business Information Management I~~]. Recommended Prerequisite: Touch System Data Entry. Recommended corequisite: Business Lab. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) - (2) (No change.)

(3) In Business Communication and Technologies [~~Business Information Management II~~], students implement personal and interpersonal skills to strengthen individual performance in the workplace and in society and make a successful transition to the workforce or postsecondary education. Students apply technical skills to address business applications of emerging technologies, create complex word-processing documents, develop sophisticated spreadsheets

using charts and graphs, and make an electronic presentation using appropriate multimedia software.

(4) - (5) (No change.)

(c) (No change.)

§130.138. Business Lab (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9-12 as a corequisite course for students participating in a coherent sequence of career and technical education courses in the Business Management and Administration Career Cluster. This course provides an enhancement opportunity for students to develop the additional skills necessary to pursue industry certification. Corequisite: any course in the Business Management and Administration Career Cluster. Recommended corequisite: Foundations of Business Communication and Technologies or Business Communication and Technologies [~~Business Information Management I or Business Information Management II~~]. This course must be taken concurrently with a corequisite course from the Business Management and Administration Career Cluster and may not be taken as a stand-alone course. Districts are encouraged to offer this lab in a consecutive block with the corequisite course to allow students sufficient time to master the content of both courses. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) - (2) (No change.)

(3) Business Lab is designed to provide students an opportunity to further enhance skills of previously studied knowledge and skills and may be used as an extension of Foundations of Business Communication and Technologies or Business Communication and Technologies [~~Business Information Management I or Business Information Management II~~]; it is a recommended corequisite course[~~,~~] and may not be offered as a stand-alone course. Students implement personal and interpersonal skills to strengthen individual performance in the workplace and in society and to make a successful transition to the workforce or postsecondary education. Students apply technical skills to address business applications of emerging technologies. Students develop a foundation in the economic [~~economical~~], financial, technological, international, social, and ethical aspects of business to become competent consumers, employees, and entrepreneurs. Students enhance reading, writing, computing, communication, and reasoning skills and apply them to the business environment. Students incorporate a broad base of knowledge that includes the legal, managerial, marketing, financial, ethical, and international dimensions of business to make appropriate business decisions.

(4) - (5) (No change.)

(c) (No change.)

§130.143. Practicum in Business Management (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisites: Touch System Data Entry and Business Management or Business Communication and Technologies [~~Business Information Management II~~]. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) - (c) (No change.)

§130.144. Extended Practicum in Business Management (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Business Management and Administration Career Cluster. Recommended prerequisites: Touch System Data Entry and Business Management or Business Communication and Technologies [~~Business Information Management II~~]. Corequisite: Practicum in Business Management. This course must be taken concurrently with Practicum in Business Management and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) - (c) (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
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SUBCHAPTER P. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS

19 TAC §130.445, §130.446

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendments implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§130.445. Introduction to Small Engine Technology [I] (One Credit), Adopted 2015.

(a) (No change.)

(b) Introduction.

(1) - (2) (No change.)

(3) Introduction to Small Engine Technology [~~I~~] includes knowledge of the function and maintenance of the systems and components of all types of small engines such as outdoor power equipment, motorcycles, generators, and irrigation engines. This course is designed to provide training for employment in the small engine technology industry. Instruction includes the repair and service of cooling, air, fuel, lubricating, electrical, ignition, and mechanical systems. In addition, the student will receive instruction in safety, academic, and leadership skills as well as career opportunities.

(4) - (5) (No change.)

(c) (No change.)

§130.446. Small Engine Technology [~~II~~] (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Introduction to Small Engine Technology [~~I~~]. Students shall be awarded two credits for successful completion of this course.

(b) Introduction.

(1) - (2) (No change.)

(3) Small Engine Technology [~~II~~] includes advanced knowledge of the function, diagnosis, and service of the systems and components of all types of small engines such as outdoor power equipment, motorcycles, generators, and irrigation engines. This course is designed to provide hands-on and practical application for employment in the small engine technology industry. Instruction includes the repair and service of cooling, air, fuel, lubricating, electrical, ignition, and mechanical systems and small engine overhauls. In addition, students will receive instruction in safety, academic, and leadership skills as well as career opportunities.

(4) - (5) (No change.)

(c) (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 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER D. SPECIALTY CERTIFICATIONS

22 TAC §463.25

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists proposes the repeal of §463.25, relating to Health Service Psychologist Specialty Certification.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. This rule is proposed to be repealed, as the addition of a Health Service Psychologist Specialty Certification onto a psychologist's license no longer provides a meaningful public benefit necessitating regulation by the Council.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.25. Health Service Psychologist Specialty Certification.

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 July 17, 2024.

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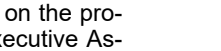
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 305-7706



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.302

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes amendments to §781.302, relating to The Practice of Social Work.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to clarify under what supervision an LMSW may practice clinical social work. The amendments would also remove restrictions on the locations an LBSW or LMSW may practice from, while preserving restrictions on LBSWs and LMSWs authorization to practice independently.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.302. The Practice of Social Work.

(a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration. An LBSW may only practice social work in an agency employment setting or under contract with an agency, unless under a non-clinical supervision plan per §781.402(d)(1) of this title.

(b) Practice of Independent Non-Clinical Baccalaureate Social Work--An LBSW recognized for independent practice, known as LBSW-IPR, may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. An LBSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LBSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(c) Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. [~~An LMSW may practice clinical social work in an agency employment setting under clinical supervision, under a supervision plan, or under contract with an agency when under a clinical supervision plan.~~] Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice. An LMSW may only practice social work in an agency employment setting or under contract with an agency, unless under a non-clinical supervision plan per §781.402(d)(1) of this title. An LMSW may practice clinical social work, as defined by subsection (f) of this section, in an agency employment setting or under contract with an agency if under clinical su-

pervision per §781.404(a)(2) of this title or under a clinical supervision plan per §781.404(a)(3) of this title.

(d) Advanced Non-Clinical Practice of LMSWs--An LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social work services in either an employment or an independent practice setting. An LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-AP must restrict his or her practice to providing non-clinical social work services.

(e) Independent Practice for LMSWs--An LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(f) Practice of Clinical Social Work--The practice of social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of clinical social work requires applying specialized clinical knowledge and advanced clinical skills in assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents, and children. The clinical social worker may engage in Baccalaureate Social Work practice and Master's Social Work practice. Clinical treatment methods may include but are not limited to providing individual, marital, couple, family, and group therapy, mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment and other practice activities. An LCSW may provide any clinical or non-clinical social work service or supervision in either an employment or independent practice setting. An LCSW may work under contract, bill directly for services, and bill third parties for service reimbursements.

(g) A licensee who is not recognized for independent practice and [~~or~~] who is not under a non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) [~~without being licensed and recognized by the Council~~], unless the person is licensed in another profession and acting solely within the scope of that license. If the person is practicing professionally under another license, the person may not use the titles [~~"licensed clinical social worker,"~~] "licensed master social worker," "licensed social worker," or "licensed baccalaureate social worker," or any other title or initials that imply social work licensure. [~~unless one holds the appropriate license or independent practice recognition.~~]

~~[(h) An LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in-home services such as in-home health care or the use of electronic media to provide services in an emergency.]~~

(h) [~~(i)~~] An LBSW or LMSW who is not recognized for independent practice may [~~practice for remuneration in a direct employment or agency setting but may not work independently,~~] bill directly to patients or bill directly to third party payers if, unless the LBSW or LMSW is under a formal supervision plan.

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 July 17, 2024.

TRD-202403153
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 305-7706

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.114

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.114, relating to Academic Course Content.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to align the Council's licensing rules better with Chapter 502 of the Occupations Code. Following review of its rules as part of its quadrennial rule-review process, the Council has determined statute does not support issuing a license to an applicant with a deficiency in their pre-graduate internship and allowing that deficiency to be cured under licensed supervised experience.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.114. Academic Course Content.

(a) An applicant who holds a graduate degree in a mental health-related field must have course work in each of the following areas:

(1) theoretical foundations of marriage and family therapy--three semester hours;

(2) assessment and treatment in marriage and family therapy--12 semester hours;

(3) human development, gender, multicultural issues and family studies--six semester hours;

(4) psychopathology--three semester hours;

(5) professional ethics--three semester hours;

(6) applied professional research--three semester hours; and

(7) supervised clinical internship--12 months or nine semester hours.

(b) An applicant who begins a graduate degree program in marriage and family therapy or a mental health-related field on or after August 1, 2017, must complete course work and the minimum required semester hours in each of the following areas (the earliest class reported on one of an applicant's official transcripts denotes the start of a program):

(1) theoretical knowledge and foundations of marriage and family therapy--three semester hours--including the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy;

(2) assessment and treatment in marriage and family therapy--12 semester hours--including but is not limited to treatment approaches specifically designed for use with a wide range of diverse couples, families, and children, including sex therapy, same sex couples, young children, adolescents, interfaith couples, crisis intervention, and elderly;

(3) human development, gender, multicultural issues and family studies--six semester hours;

(4) psychopathology--three semester hours--including traditional psycho-diagnostic categories including knowledge and use of the Diagnostic and Statistical Manual of Mental Disorders;

(5) professional ethics--three semester hours--including professional identity of the marriage, couple, and family therapist, including professional socialization, scope of practice, professional organizations, licensure and certification; and ethical issues related to the profession of marriage, couple, and family therapy as well as the practice of individual therapy;

(6) applied professional research--three semester hours--including research evidence related to MFT, becoming an informed consumer of research, and research and evaluation methods;

(7) treatment of addictions and management of crisis situations--no minimum requirements;

(8) supervised clinical internship--12 months or nine semester hours. During the supervised clinical internship, the applicant must have 300 hours of experience, of which:

(A) at least 150 hours must be direct client contact hours; and

(B) of the 150 direct client contact hours, at least 75 hours must be direct client contact with couples and families.

(c) The remaining courses needed to meet the 45 or 60 graduate semester hour requirement must be marriage and family therapy or related course work in areas directly supporting the development of an applicant's professional marriage and family, individual, or group therapy skills.

~~[(d) Staff may issue an LMFT Associate license to an applicant who has a deficiency in pre-graduate internship months, semester hours, or clock hours required by subsection (a)(7) or (b)(8) of this section, but must require the applicant to complete the deficient months, semester hours, or clock hours in addition to the post-graduate, licensed supervised clinical experience requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions) before awarding an LMFT license to that applicant.]~~

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 July 17, 2024.

TRD-202403154
Darrel D. Spinks
Executive Order
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 305-7706

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22 TAC §801.115

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes the repeal of §801.115, relating to Academic Requirements and Supervised Clinical Internship Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed, so that the Council's licensing rules better align with Chapter 502 of the Occupations Code. Following review of its rules as part of its quadrennial rule-review process, the Council has determined statute does not support considering out-of-state applicants to have met Texas academic licensing requirements based solely on holding a license in another jurisdiction.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amend-

ment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication in the *Texas Register.*

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.115. Academic Requirements and Supervised Clinical Internship Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction.

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 July 17, 2024.

TRD-202403155
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 305-7706

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22 TAC §801.142

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.142, relating to Supervised Clinical Experience Requirements and Conditions.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to change the amount of supervision hours provided by telephone that may be counted toward licensure. The proposed amendments are also meant to align the Council's licensing rules better with Chapter 502 of the Occupations Code. Following review of its rules as part of its quadrennial rule-review process, the Council has determined statute does not support allowing excess graduate internship hours to be counted toward licensed supervised experience requirements. The Council proposed grandfathering this rule change for candidates already enrolled in a degree program as of September 1, 2025. The Council also determined statute does not support considering out-of-state applicants to have met Texas supervised experience requirements based solely on holding a license in another jurisdiction and proposed repeal of this section.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the council.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy, which includes a minimum of 3,000 hours of supervised clinical practice. The required 3,000 hours must include at least 1,500 hours providing direct clinical services, of which:

~~[(A) at least 1,500 hours providing direct clinical services, of which:]~~

(A) ~~[(i)]~~ no more than 750 hours may be provided via technology-assisted services (as approved by the supervisor); and

(B) ~~[(ii)]~~ at least 500 hours must be providing direct clinical services to couples or families.

~~[(B) of the 200 hours of council-approved supervision, as defined in §801.2 of this title (relating to Definitions), of which:]~~

~~*[(i)* at least 100 hours must be individual supervision; and]~~

~~*[(ii)* no more than 50 hours may be provided by telephonic services, but there is no limit for hours by live video.]~~

(2) The remaining required hours, not covered by subsection (1) above, may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(3) An LMFT Associate must obtain a minimum of 200 hours of supervision by an LMFT-S during the required 3,000 hours, and at least 100 of these hours must be individual supervision.

(A) An LMFT Associate, when providing services, must receive a minimum of one hour of supervision every week, except for good cause shown.

(B) Supervision may be provided in person or by live video or, if the supervisor determines that in-person or live video supervision is not accessible, by telephone.

(C) An LMFT Associate may apply up to 100 graduate internship supervision hours toward the required 200 hours of supervision required for licensure as an LMFT.

[(3) An LMFT Associate, when providing services, must receive a minimum of one hour of supervision every week, except for good cause shown.]

(4) For an LMFT applicant who begins the graduate degree program used for their license application before September 1, 2025, staff [Staff] may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title [(relating to Academic Course Content)] toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours, of which no more than 250 hours may be direct clinical services to couples or families, completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours, of which no more than 200 hours may be direct clinical services to couples or families, completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

[(C) No more than 100 excess graduate internship supervision hours may be counted toward the minimum requirement of at least 200 hours of council-approved supervision.]

(5) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(6) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules.

(7) Within 30 days of the initiation of supervision, an LMFT Associate must submit to the council a Supervisory Agreement Form for each council approved supervisor.

(8) An LMFT Associate may have no more than two council-approved supervisors at a time, unless given prior approval by the council or its designee.

[(9) Except as specified in paragraph (4) of this section, hours of supervision and supervised clinical experience accrued toward an out-of-state LMFT license may be accepted only by endorsement.]

[(A) The applicant must ensure supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the council.]

[(B) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the supervised clinical experience requirements are considered met. If licensed for any other two-year period, the application will be reviewed to determine whether clinical experience requirements have been met in accordance with council rules, 22 Texas Administrative Code §882.1 (relating to Application Process).]

(9) [(10)] Applicants with a master's degree that qualifies under §§801.112 and 801.113 may count any supervision and experience (e.g., practicum, internship, externship) completed after conferral of the master's degree and as part of a doctoral program, toward the supervision and experience requirements set out in §801.142. A doctoral program must lead to a degree that qualifies under §§801.112 and 801.113 before the Council will award credit for supervision and experience under this provision.

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 July 17, 2024.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 305-7706

22 TAC §801.201

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes new §801.201, relating to Temporary License.

Overview and Explanation of the Proposed Rule. The proposed new rule creates a temporary Texas license for marriage and family therapists who are licensed to practice independently in another jurisdiction. Temporary license holders are allowed to use this license for up to thirty (30) days within one year from the date of issuance, and the thirty days are not required to be consecutive. Temporary license holders are required to report the use of this license after utilizing the full thirty days or the expiration of one year from licensure, whichever occurs first.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Specifically, the Executive Council proposes this rule pursuant to the authority found in §502.258 of the Tex. Occ. Code, which grants the Executive Council authority to adopt a rule for the issuance of a temporary license.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.201. Temporary License.

(a) A temporary license may be issued to an applicant seeking to practice in this state for a limited time and purpose. To be eligible for temporary licensure, an applicant must:

(1) submit a completed application for temporary licensure;

(2) pay the application fee;

(3) submit proof that the applicant is actively licensed, certified, or registered to practice independently, without supervision, as a marriage and family therapist by another jurisdiction; and

(4) submit documentation indicating that the applicant is in good standing with that jurisdiction.

(b) Applicants meeting the requirements for temporary licensure shall be granted a temporary license authorizing the delivery of marriage and family therapy services for no more than thirty (30) days. Upon utilization of the full thirty days, or the expiration of one year from the date of licensure, whichever occurs first, the temporary license shall expire.

(c) Upon utilization of the full thirty days, or the expiration of one year from the date of licensure, whichever occurs first, the temporary licensee must submit written notification to the Council of the dates the licensee delivered marriage and family therapy services in this state.

(d) Temporary licensees are subject to all applicable laws governing the practice of marriage and family therapy in this state, including the Licensed Marriage and Family Therapist Act and Council rules.

(e) An applicant for permanent licensure in this state is not eligible for temporary licensure. Upon receipt of an application for permanent licensure by a temporary license holder, any temporary license held by an applicant shall expire without further action or notice by the Council.

(f) A temporary license holder may not receive another temporary license until the expiration of one year from the date of issuance of their last temporary license, regardless of whether that license is active or expired.

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 July 17, 2024.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.14

The Texas Behavioral Health Executive Council proposes new §882.14, relating to Petition for Waiver or Remediation of Deficiency.

Overview and Explanation of the Proposed Rule. The proposed new rule authorizes the Council through its member boards to accept remediation of any licensing requirement that is not required by statute or federal law.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§882.14. Petition for Waiver or Remediation of Deficiency

(a) An applicant who does not meet the prerequisites for a particular license under Chapters 501, 502, 503, or 505 of the Occupations Code, may petition the Council to waive or remediate a deficiency of their application. The Council may waive a prerequisite, or allow remediation by setting reasonable conditions on the applicant for approval of the license application, if:

(1) the applicant can show

(A) good cause for the deficiency, or

(B) that the deficiency is due to a disaster declared under Chapter 418 of the Government Code or under similar authority in another jurisdiction;

(2) the prerequisite(s) is not mandated by federal law, the Texas Constitution, or state statute;

(3) the deficiency would not adversely affect the public welfare; and

(4) any conditions established by the member board will ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought.

(b) Each member board shall be responsible for reviewing petitions for waiver or remediation of a license prerequisite in accordance with §882.4 of this chapter.

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 July 17, 2024.

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Darrel D. Spinks
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Texas Behavioral Health Executive Council
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SUBCHAPTER B. LICENSE

22 TAC §882.21

The Texas Behavioral Health Executive Council proposes amendments to §882.21, relating to License Statuses.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed amendments update the definition of inactive and delinquent licenses to ensure a license with a pending disciplinary complaint or investigation does not expire until after the complaint has been resolved. The amendments also clarifies which licenses statuses allow practice and the process for requesting retirement of a license.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

APPLICABLE LEGISLATION. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

STATUTORY AUTHORITY. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§882.21. License Statuses.

(a) Active Status. Any licensee with a license on active status may practice pursuant to that license, subject to any restrictions imposed by the Council. [~~Active status is the only status under which a licensee may engage in the practice of the licensee's respective profession.~~]

(b) Inactive Status.

(1) A licensee with an unrestricted active license may elect inactive status through the Council's online licensing system. A licensee who elects inactive status must pay the associated fee. A licensee may not engage in the practice of the licensee's respective profession under an inactive license.

(2) A licensee with an inactive license is not required to comply with continuing education requirements while the license is inactive.

(3) The inactive status period for a license shall coincide with the license renewal period. At the end of the renewal period, if the inactive status has not been renewed or the license returned to active status, the license will expire, unless there is a complaint pending against the license. An inactive license with a pending complaint that has not been renewed or returned to active status within the renewal period will remain in inactive status until resolution of the complaint. Upon resolution, the license shall be subject to any resulting disciplinary action and, if not revoked or resigned, shall expire.

(4) In order to continue on inactive status, an inactive licensee must renew the inactive status each renewal period. Licensees may renew their inactive status through the Council's online licensing system by completing the online renewal requirements and paying the associated fee.

(5) A licensee with a pending complaint may not place a license on inactive status. The Council may sanction a license on inactive status for violations of its rules. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the terms of the disciplinary action or restricted status have been terminated. Failure to reactivate a license when required by this paragraph shall constitute grounds for further disciplinary action.

(6) An inactive license may be reactivated at any time by applying for active status through the online licensing system. When reactivating a license, a licensee must pay the renewal fee associated with the license. A license that has been reactivated is subject to the standard renewal schedule and requirements, including renewal and late fees. Notwithstanding the foregoing, a license that is reactivated within 60 days of its renewal date will be considered as having met all renewal requirements and will be renewed for the next renewal period.

(7) Any licensee reactivating a license from inactive status must provide proof of completion of the continuing education requirements for renewal of that particular license before reactivation will occur.

(8) A licensee wishing to reactivate a license that has been on inactive status for four years or more must take and pass the relevant jurisprudence exam with the minimum acceptable score, unless the licensee holds another license on active status within the same profession.

(c) Delinquent Status. A licensee who fails to renew a license for any reason when required is considered to be on delinquent status. [~~Any license delinquent for more than 12 consecutive months shall expire.~~] A licensee may not engage in the practice of the licensee's respective profession under a delinquent license. The Council may sanction a delinquent licensee for violations of its rules. Any license delinquent for more than 12 consecutive months may not be renewed and shall expire unless there is a complaint pending against the license. A license with a pending complaint that has been delinquent for more than 12 months will remain in delinquent status until resolution of the complaint. Upon resolution, the license shall be subject to any resulting disciplinary action and, if not revoked or resigned, shall expire.

(d) Restricted Status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in an agency order is a restricted license. A licensee may not engage in the practice of the licensee's respective profession under a suspended license. A licensee who is under a probated suspension or other restriction may only practice under the terms of that restriction.

(e) Retirement Status. A licensee who is on active, [~~or~~] inactive, or delinquent status may retire the license by submitting an online application to the Council. [~~notifying the Council in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire the license by notifying the Council in writing prior to the license expiring.~~] However, a licensee with a pending complaint or restricted license may not retire the license. A licensee who retires a license shall be reported to have retired in good standing. A licensee may not engage in the practice of the licensee's respective profession under a retired license.

(f) Resignation Status. A licensee may resign only upon express agreement with the Council. A licensee may not engage in the practice of the licensee's respective profession under a resigned license.

(g) Expired Status. A license that has been delinquent for more than 12 consecutive months or any inactive license that is not renewed or reactivated is considered to be expired, except delinquent or inactive licenses pending complaint resolution. A licensee may not engage in the practice of the licensee's respective profession under an expired license.

(h) Revoked Status. A revoked status results from a license being revoked pursuant to an agency order. A licensee may not engage in the practice of the licensee's respective profession under a revoked license.

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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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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CHAPTER 884. COMPLAINTS AND ENFORCEMENT
SUBCHAPTER B. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

22 TAC §884.10

The Texas Behavioral Health Executive Council proposes amendments to §884.10, relating to Investigation of Complaints.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to allow Council staff to close without investigation a complaint that lacks sufficient evidence to identify a violation or where the complainant is uncooperative.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at

least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§884.10. Investigation of Complaints.

(a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:

(1) High Priority - cases involving sexual misconduct or a probability of imminent physical harm to the public or a member of the public; and

(2) Regular Priority - cases involving all other violations of state or federal law.

(b) The Enforcement Division shall investigate all complaints in a timely manner. A schedule shall be established for conducting each phase of a complaint that is under the control of the Council not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file of the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified in writing not later than the seventh day after the date the change is made.

(c) The Council may accept, but is not obligated to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint, a complaint that lacks sufficient evidence to identify a specific violation, or a complaint with an uncooperative complainant.

(d) A complainant may explain the allegations made in the complaint by attaching or including with the complaint any evidence the complainant believes is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.

(e) A review will be conducted upon receipt of a complaint to determine if the Council has jurisdiction over the complaint, and if so, whether the complaint states an allegation which, if true, would constitute a violation of the Council's rules or other law within the jurisdiction of the Council.

(f) Complaints that do not state a violation of a law within the jurisdiction of the Council shall be dismissed. If the complaint alleges a violation of a law within the jurisdiction of another agency, the complaint will be referred to that agency as required or allowed by law.

(g) Complaints that state a violation of a law within the jurisdiction of the Council shall be investigated by an investigator assigned by the Enforcement Division.

(h) Licensees will receive written notice of any alleged complaint(s), including specific information regarding any violation(s) encountered. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record at the time of the mailing.

(i) Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation has occurred.

(j) The Enforcement Division Manager (or the manager's designee) and legal counsel shall review the investigation report to determine if there is probable cause that a violation occurred.

(k) A complaint for which the staff determines probable cause exists shall be referred for an informal conference by agency staff or a member board's Disciplinary Review Panel. Agency staff shall send the respondent notice of the date and time of the informal conference.

(l) A complaint for which staff or a Disciplinary Review Panel determines that probable cause does not exist shall be referred for dismissal.

(m) The services of a private investigator shall be retained only in the event that staff investigator positions are vacant or inadequate to provide essential investigative services. The services of a private investigative agency shall be obtained in accordance with the state's procurement procedures.

(n) If a complainant or respondent are represented by an attorney, any notice or service required by law shall be made upon the attorney at the attorney's last known address.

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 July 17, 2024.

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 305-7706

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SUBCHAPTER H. CONTESTED CASES

22 TAC §884.60

The Texas Behavioral Health Executive Council proposes the repeal of §884.60, relating to Witness Fees.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed and replaced with a new rule relating to depositions, subpoenas, and witnesses that is proposed elsewhere in this issue of the *Texas Register.*

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated

cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§884.60. Witness Fees.

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 July 17, 2024.

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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22 TAC §884.60

The Texas Behavioral Health Executive Council proposes new §884.60, relating to Depositions, Subpoenas, and Witness Expenses.

Overview and Explanation of the Proposed Rule. The proposed new rule is intended to clarify agency procedures for the issuance of subpoenas and commissions for depositions during a contested case at SOAH.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§884.60. Depositions, Subpoenas, and Witness Expenses.

(a) In accordance with §§2001.089 and 2001.094 of the Government Code and §507.206 of the Occupations Code, on the written request of any party, the executive director may issue a commission for a deposition or a subpoena to require the attendance of witnesses or the production of tangible items in a contested case docketed at SOAH.

(b) If the commission or subpoena is for a witness to attend a deposition or a hearing, the written request shall contain the name and address of the witness and the date and location where the witness must appear.

(c) If the subpoena is for the production of tangible items, the written request shall contain a description of the items, the name and address of the person who has custody of the items, and the date and location where they must be produced.

(d) Each subpoena or commission request shall contain a statement why it should be issued.

(e) The executive director shall issue a subpoena or commission if there is good cause.

(f) A witness who is not a party and who is subpoenaed to appear at a deposition or hearing is entitled to reimbursement for expenses in accordance with Texas Government Code §2001.103.

(g) The party or agency at whose request a witness appears or the deposition is taken shall be responsible for payment of the expenses required by this rule.

(h) A party requesting a commission or subpoena shall deposit funds with the Council, in the form of a check or money order made payable to the witness, sufficient to cover the anticipated expenses for complying with the subpoena. The executive director may not issue a party's subpoena or commission until sufficient funds are deposited.

(i) The Council shall forward the deposited funds to the witness via certified mail, along with a copy of the subpoena or commission. Alternatively, if the party requesting the subpoena or commission wishes to serve the witness by another means then the deposited funds shall be returned to that party, via regular or certified mail, along with

a copy of the subpoena or commission to be served by the requesting party.

(j) In accordance with §§2001.089 and 2001.094 of the Government Code and §507.206 of the Occupations Code, the executive director or presiding member of the Council has the exclusive authority to issue a commission or subpoena, as well as approve or deny a request for the same.

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 July 17, 2024.

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Darrel D. Spinks
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Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council proposes amendments to §885.1, relating to Executive Council Fees.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to clarify that only individuals eligible to reinstate an expired license may apply for reinstatement. In addition, the amendments clarify the requirements for receiving waiver of licensing and examination fees for military service-related applicants. The proposed amendments remove fees for an LMFT Associate license renewal or extension, which are no longer authorized under agency rules, and for a mailing list the agency no longer provides. Another rule proposal would create a temporary MFT licenses, so a $103 fee is established. The proposed amendments clarify fee components for application to upgrade an LMFT Associate license, for reciprocity psychology applications, and for examinations.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 1, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§885.1. Executive Council Fees.

(a) General provisions.

(1) All fees are nonrefundable, nontransferable, and cannot be waived except as otherwise permitted by law. Any attempt to cancel, initiate a chargeback, or seek recovery of fees paid to the Council may result in the opening of a complaint against a licensee or applicant.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:

(1) Fees effective through August 31, 2023. (No change)
Figure: 22 TAC §885.1(b)(1) (No change.)

(2) Fees effective on September 1, 2023.
Figure: 22 TAC §885.1(b)(2)
[~~Figure: 22 TAC §885.1(b)(2)~~]

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, if eligible the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for applicants who are: [~~the following individuals:~~]

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; or [~~and~~]

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §157.2, concerning Definitions; §157.125, concerning Requirements for Trauma Facility Designation; and §157.128, concerning Denial, Suspension, and Revocation of Trauma Facility Designation; the repeal of §157.123, concerning Regional Emergency Medical Services/Trauma Systems; §157.130, concerning Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, Trauma Facilities, and Trauma Care System Fund; and §157.131, concerning Designated Trauma Facility and Emergency Medical Services Account; and new §157.123, concerning Regional Advisory Councils; §157.126, concerning Trauma Facility Designation Requirements Effective on September 1, 2025; and §157.130, concerning Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Medical Services Account.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the content and processes with the advances, evidence-based practices, and system processes that have developed since these rules were adopted and to align with American College of Surgeons (ACS) standards. The rules also require amendments to implement legislation passed since the rules were last adopted. Senate Bill (S.B.) 330, 79th Legislature, Regular Session, 2005, amends Texas Health and Safety Code Chapter 773, Subchapter H,

§773.203, requiring the development of regional stroke plans. House Bill (H.B.) 15, 83rd Legislature, Regular Session, 2013, and H.B. 3433, 84th Legislature, Regular Session, 2015, amends Texas Health and Safety Code Chapter 241, §241.183, requiring the development of perinatal care regions. S.B. 984, 87th Legislature, Regular Session, 2021, amends Texas Health and Safety Code Chapter 81, §81.027, directing the Regional Advisory Councils (RACs) to collect specific health care data. S.B. 969, 87th Legislature, Regular Session, 2021, amends Texas Health and Safety Code Chapter 81, §81.0445, requiring the RACs provide public information regarding public health disasters to stakeholders. S.B. 1397, 87th Legislature, Regular Session, 2021, amends Texas Health and Safety Code Chapter 773, §773.1141, requiring a RAC with at least one county located on the international border of Texas and at least one county adjacent to the Gulf of Mexico to track all patient transfers and the reason for the transfer out of its region.

A previous rule proposal was published in the January 19, 2024, issue of the *Texas Register.* The formal comment period on that proposal ended on February 20, 2024. Nearly 4,000 public comments were received. The major themes identified in the formal public comments included the following: align the trauma facility designation with the ACS standards and processes, provide 12 to 18 months for trauma facilities to prepare for the new rules before implementing the proposed rules, decrease the overall burden of cost for trauma facility designation, and decrease cost burden for the rural trauma facilities to maintain their designation.

To effectively address the public comments including implementation timelines, DSHS was required to withdraw that rule proposal. The notice providing that the proposed rules are withdrawn was published in the May 10, 2024, issue of the *Texas Register.* DSHS now proposes these amendments, repeals, and new rules in response to public and stakeholder comments.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §157.2, concerning Definitions, integrates terminology for the RACs, emergency medical systems, trauma facilities, stroke facilities and current national standards. The definitions reflect terms for the trauma and emergency health care system, emergency medical services (EMS), trauma center management, and stroke center management.

The proposed repeal of §157.123, concerning Regional Emergency Medical Services/Trauma Systems, is replaced with new §157.123, concerning Regional Advisory Councils. New §157.123 implements H.B. 15, H.B. 3433, S.B. 330, S.B. 969, S.B. 984, and S.B. 1397, and defines additional requirements and functions of the RACs; develops a system of stroke survival, creating a process for stroke designation and regional stroke system plans; develops perinatal care regions to develop perinatal systems of care; requires a specific RAC (Lower Rio Grande Valley RAC) to track all patient transfers out of the identified RAC and the reasons for the transfer; and requires all RACs to collect specific health care data to facilitate emergency response planning and preparedness and to provide public information regarding public health disasters to stakeholders. Figure 25 TAC §157.123(c) is deleted.

The proposed amendment to §157.125, concerning Requirements for Trauma Facility Designation, clarifies that all designation surveys conducted on or before August 31, 2025, will meet the requirements of §157.125, allows a facility under a multi-location license to not be designated, and includes other clarifying changes. The following figures are deleted.

Figure: 25 TAC §157.125(x)

Figure: 25 TAC §157.125(x)(1)

Figure: 25 TAC §157.125(x)(2)

Figure: 25 TAC §157.125(y)

Figure: 25 TAC §157.125(y)(1)

Figure: 25 TAC §157.125(y)(2)

The content from figures 25 TAC §157.125(x) and 25 TAC §157.125(y) have been updated and incorporated into the rule text of §157.125(x) and §157.125(y), respectively.

Proposed new §157.126, concerning Trauma Facility Designation Requirements Effective on September 1, 2025, will apply to all designation surveys conducted on or after September 1, 2025. The section defines the requirements hospitals must meet to achieve trauma facility designation aligning with the national standards for trauma centers as outlined by the ACS; requires Level IV facilities evaluating and admitting 101 or more patients meeting National Trauma Data Back (NTDB) registry inclusion criteria meet the most current ACS criteria in addition to the state trauma requirements; and requires Level IV facilities evaluating and admitting 100 or less trauma patients meeting NTDB registry inclusion criteria meet the state trauma requirements to achieve designation.

The proposed amendment to §157.128, concerning Denial, Suspension, and Revocation of Trauma Facility Designation, updates the reasons why a facility designation may be denied, suspended, or revoked and describes the appeal process.

The proposed repeal of §157.130, concerning Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, Trauma Facilities, and Trauma Care System Fund, and the proposed repeal of §157.131, concerning Designated Trauma Facility and Emergency Medical Services Account, are necessary to integrate the rule text in new §157.130, concerning Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Medical Services Account. New §157.130 integrates the subdivision of a fund under Texas Health and Safety Code Chapter 780; reorganizes all funding requirements specific to the EMS allocation; and describes how EMS providers may contribute funds for a specified purpose within a trauma service area (TSA).

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of DSHS employee positions:

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

(5) the proposed rules will create new regulations;

(6) the proposed rules will expand 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

Christy Havel Burton has determined that there may be an adverse economic effect on small businesses, micro businesses, or rural communities relating to hospitals meeting the designation requirements due to the advances in trauma care practices, advances in technology, and clinical resource needs since the adoption of the rule in 2004. Costs are associated with complying with requirements for designation; however, designation is voluntary.

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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Timothy Stevenson has determined that for each year of the first five years the rules are in effect, the public benefit includes improved trauma care, improved data reflecting trauma outcomes, improved regional system development, and advancements in the EMS/Trauma Systems by aligning the Texas trauma system to current national standards, advances in clinical care, evidence-based practice for trauma care, data management, and regional coordination.

Christy Havel Burton has also determined that for the first five years the rules are in effect, any economic costs to the persons regarding the proposed rules are related to complying with the requirements that align the Texas system with current national standards. Trauma designation is voluntary and the choice of the facility.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her 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 EMS/Trauma Systems Section, DSHS, Attn: Proposed Trauma Rules, P.O. Box 149347, Mail Code 1876, Austin, Texas 78714-3247; street address 1100 West 49th Street, Austin, Texas 78756; or by email to DSHS.EMS-Trauma@dshs.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 Trauma Designation Rules 21R151" in the subject line.

SUBCHAPTER A. EMERGENCY MEDICAL SERVICES - PART A

25 TAC §157.2

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 773 (Emergency Health Care Act), which authorizes the Executive Commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code Chapter 773, Subchapter G, which provides for the authority to adopt rules related to emergency medical services and trauma services; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment is authorized by Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 773 and 1001.

§157.2. Definitions.

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

(1) Abandonment--[-]Leaving a patient without appropriate medical care once patient contact has been established, unless emergency medical services personnel are following the medical director's protocols, a physician directive, or the patient signs a release; or turning the care of a patient over to an individual of lesser education when advanced treatment modalities have been initiated.

(2) Accreditation--[-]Formal recognition by a national association of a provider's service or an education program based on standards established by that association.

(3) Act--[-]Emergency Health Care [~~Medical Services~~] Act, Texas Health and Safety Code[~~,~~] Chapter 773.

(4) Active pursuit of department designation as a trauma facility--An undesignated facility recognized by the department after applying for designation as a trauma facility and has met the requirement to be eligible for uncompensated trauma care funds.

(5) Acute Stroke-Ready Level IV stroke facility--A hospital reviewed by a department-approved survey organization and meeting the national stroke standards of care for an acute stroke-ready facility as described in §157.133 of this chapter (relating to Requirements for Stroke Facility Designation).

(6) [~~(4)~~] Administrator of record [~~of Record~~] (AOR)--[-]The administrator for an emergency medical services (EMS) [~~(EMS)~~] provider who meets the requirements of Texas Health and Safety Code[~~,~~] §773.05712 [~~and §773.0415~~].

(7) [~~(5)~~] Advanced emergency medical technician [~~Emergency Medical Technician~~] (AEMT)--[-]An individual [~~who is~~]

certified by the department and [~~is~~] minimally proficient in performing the basic life support skills required to provide emergency prehospital or interfacility care and initiating and maintaining under medical supervision, certain advanced life support procedures, including intravenous therapy and endotracheal or esophageal intubation.

(8) Advanced Level II stroke facility--A hospital that completes a designation survey with a department-approved survey organization, meets the national stroke standards for Non-Comprehensive Thrombectomy Stroke Center, and meets the requirements of an Advanced Level II stroke facility as defined by §157.133 of this chapter.

(9) Advanced Level III trauma facility--A hospital surveyed by a department-approved survey organization that meets the state requirements and American College of Surgeons (ACS) standards for a Level III trauma facility as described in §157.125 of this chapter (relating to Requirements for Trauma Facility Designation Effective Through August 31, 2025 and §157.126 of this chapter (relating to Trauma Facility Designation Requirements Effective on September 1, 2025).

(10) [~~(6)~~] Advanced life support (ALS)--[-]Emergency prehospital or interfacility care that uses invasive medical acts and [~~which~~] includes [~~would include~~]ALS assessment. The provision of advanced life support must [~~shall~~] be under the medical supervision and control of a licensed physician.

[~~(7) Advanced life support (ALS) vehicle - A vehicle that is designed for transporting the sick and injured and that meets the requirements of §157.11(j)(2) of this title (relating to Requirements for an EMS Provider License) as an advanced life support vehicle and has sufficient equipment and supplies for providing advanced level of care based on national standards and the EMS provider's medical director approved treatment protocols.~~]

(11) [~~(8)~~] Advanced life support [~~Life Support~~] assessment--[-]Assessment performed by an AEMT or paramedic that qualifies [~~qualify~~] as advanced life support based upon initial dispatch information, when it could reasonably be believed [~~that~~]the patient was suffering from an acute condition that may require advanced skills.

(12) Advanced life support vehicle--A vehicle designed for transporting the sick and injured and meeting the requirements of §157.11 of this chapter (relating to Requirements for an EMS Provider License) as an ALS vehicle and having sufficient equipment and supplies for providing an advanced level of care based on national standards and the EMS provider's medical director-approved treatment protocols.

(13) Advanced practice provider (APP)--A nurse practitioner or physician assistant reviewed and credentialed by the facility and may have additional credentialing to participate in the designation program.

(14) [~~(9)~~] Air ambulance provider--[-]A person who operates, maintains, or leases [~~operates/leases~~] a fixed-wing or rotor-wing air ambulance aircraft, equipped and staffed to provide a medical care environment on-board appropriate to the patient's needs. The term air ambulance provider is not synonymous with and does not refer to the Federal Aviation Administration (FAA) air carrier certificate holder unless the air ambulance provider maintains and controls [~~they also maintain and control~~] the medical aspects [~~that are~~] consistent with EMS provider licensure.

(15) [~~(10)~~] Ambulance--[-]A vehicle for transportation of the sick or injured patient [~~person~~] to, from, or between places of treatment for an illness or injury[,] and that provides out-of-hospital [~~provide out of hospital~~] medical care to the patient.

(16) American College of Surgeons (ACS)--The organization that sets the national standards for trauma centers, trauma verification, the National Trauma Data Standards (NTDS), National Trauma Data Bank (NTDB), Trauma Quality Improvement Program (TQIP), and regional system standards.

(17) Approved survey organization--An organization that has received department authorization to conduct designation surveys, meeting the department's designation survey guidelines and expectations.

(18) [~~(11)~~] Authorized ambulance vehicle--[-]A vehicle authorized to be operated by the licensed provider and meeting [~~that meets~~] all criteria for approval as described [~~listed~~] in §157.11(e) of this chapter [~~title~~].

(19) Bad debt--The unreimbursed cost for patient care to a hospital providing trauma care.

(20) Basic Level IV trauma facility--A hospital surveyed by a department-approved survey organization evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria and meeting the state requirements and ACS standards, or a hospital surveyed by the department that evaluates and admits 100 or less trauma patients annually meeting NTDB registry inclusion criteria and meeting the state designation requirements for a Level IV trauma facility as described in §157.125 and §157.126 of this chapter.

(21) [~~(12)~~] Basic life support (BLS)--[-]Emergency prehospital or interfacility care that uses noninvasive medical acts. The provision of basic life support will have sufficient equipment and supplies for providing basic-level [~~basic- level~~] care based on national standards and the EMS provider's medical director-approved [~~director-approved~~] treatment protocols.

(22) [~~(13)~~] Basic life support (BLS) vehicle--[-]A vehicle [~~that is~~] designed for transporting the sick or injured and having [~~that has~~]sufficient equipment and supplies for providing basic life support based on national standards and the EMS provider's medical director-approved [~~director approved~~] treatment protocols.

[~~(14) Basic trauma facility - A hospital designated by the department as having met the criteria for a Level IV trauma facility as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation). Basic trauma facilities provide resuscitation, stabilization, and arrange for appropriate transfer of major and severe trauma patients to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.~~]

(23) [~~(15)~~] Bypass--[-]Direction given to a prehospital emergency medical services unit[,] by direct on-line [~~direct/on-line~~] medical control, or predetermined triage criteria[,] to pass the nearest hospital for the most appropriate [~~hospital/trauma~~] facility. Development of bypass protocols must [~~Bypass protocols should~~] have local physician input [~~into their development~~] and [~~should~~] be reviewed through the regional performance improvement process.

(24) Calculation of the costs of uncompensated trauma care--A calculation of a hospital's total costs of uncompensated trauma care for patients meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria determined by summing its charges related to uncompensated trauma care as defined in §157.130 of this chapter (relating to Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Services Account), then

applying the cost-to-charge ratio derived in accordance with generally accepted accounting principles.

(25) [~~(16)~~] Candidate--[-]An individual [~~who is~~] requesting emergency medical services personnel certification,[~~or~~] licensure, recertification, or re-licensure from the department [~~Texas Department of State Health Services~~].

(26) [~~(17)~~] Certificant--[-]Emergency medical services personnel with current certification from the department [~~Texas Department of State Health Services~~].

(27) Charity care--The unreimbursed cost to a hospital providing health care services for an inpatient, emergency department, transferred, or expired person classified by the hospital as "financially indigent."

(28) Commissioner--The commissioner of the Texas Department of State Health Services.

(29) Comprehensive Level I stroke facility--A hospital surveyed by a department-approved survey organization meeting the national standards of care for a Comprehensive Stroke Center, participates in its local Regional Advisory Council (RAC), participates in the regional stroke plan, and submits data to the department, as requested as defined by §157.133 of this chapter.

(30) [~~(18)~~] Comprehensive Level I trauma facility--[-]A hospital surveyed by a department-approved survey organization meeting the state designation requirements and ACS standards [~~designated by the department as having met the criteria~~] for a Level I trauma facility as described in §157.125 and §157.126 of this chapter [~~§157.125 of this title~~]. [~~Comprehensive trauma facilities manage major and severe trauma patients, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, implement targeted injury prevention programs, and conduct trauma research.~~]

(31) Concurrent performance improvement--Performance improvement reviews occurring from prehospital, trauma activation, or admission through to discharge. The primary level of review must be completed within 14 days of discharge, 80 percent of the time.

(32) Concurrent trauma registry abstraction--Trauma registry data abstraction and registry data entry occurring during the hospital evaluation and admission and completed within 60 days after the patient's discharge, 80 percent of the time.

(33) Consumer Protection Division (CPD)--A division within the Texas Department of State Health Services responsible for the oversight of EMS provider licensure, certification, education, and complaint investigation. The division is responsible for the hospital designation process for trauma, stroke, maternal, and neonatal facilities; the RAC system development and advances; and funding, grant management, and distribution of funding for the division.

(34) Contingent designation--A designation awarded to a facility with one to three unmet designation requirements. The department develops a corrective action plan (CAP) for the facility and the facility must complete this plan and meet requirements to remain designated. Contingent designations may require a focused survey to validate requirements are met. The facility must demonstrate requirements are met to maintain designation.

(35) Contingent probationary designation--A designation awarded to a facility with four or more unmet designation requirements. The department develops a CAP for the facility and the facility must complete this plan and meet requirements to remain designated. The facility may be required to submit documentation reflecting the CAP to the department at defined intervals. Contingent probationary designation may require a full survey within 12 to 18 months after the original survey date. The facility must demonstrate requirements are met to maintain designation.

(36) Corrective action plan (CAP)--A plan for the facility developed by the department describing the actions the facility is required to correct.

(37) Cost-to-charges ratio--A ratio covering all applicable hospital costs and charges relating to inpatient care determined by the Texas Health and Human Services Commission from the hospital's Medicaid cost report.

(38) County of licensure--The county in which the physical address of a licensed EMS provider is located, as indicated by the provider on the application for licensure that is filed with the department.

(39) [~~(19)~~] Course medical director--[-]A Texas-licensed [~~Texas licensed~~] physician, approved by the department, with experience in and current knowledge of emergency care who must [~~shall~~] provide direction over all instruction and clinical practice required in EMS training courses.

(40) [~~(20)~~]Credit hour--[-]Continuing education credit unit awarded for successful completion of a unit of learning activity as defined in §157.32 of this chapter [~~title~~] (relating to Emergency Medical Services [~~EMS~~] Education Program and Course Approval).

(41) [~~(21)~~]Critically injured person--An individual[~~-A person~~] suffering [~~major or severe trauma,~~] with multi-system [~~severe multi system~~] injuries or major single-system [~~unisystem~~] injury; the extent of the injury may be difficult to ascertain[~~,~~] but [~~which~~] has the potential of producing mortality or major disability. Retrospectively, typically defined with an injury severity score (ISS) of 25 or greater.

[~~(22) Current - Within active certification or licensure period of time.~~]

(42) Definitive care--The phase of care in which therapeutic interventions, treatments, or procedures are performed to stop or control an injury, illness, or disease and promote recovery.

(43) [~~(23)~~] Department--[-]The Texas Department of State Health Services.

(44) Designated facility administrator--Administrator responsible for the oversight, funding, contracts, and leadership of designated programs.

(45) [~~(24)~~] Designated infection control officer--[-]A designated officer who serves as a liaison between the employer [~~employer's~~] and the employees who have been or believe to [~~they~~] have been exposed to a potentially life-threatening infectious disease[~~,~~] through a person who was treated or [~~and/or~~] transported[~~,~~] by the EMS provider.

(46) [~~(25)~~] Designation--[-]A formal recognition by the department of a hospital's [~~trauma care~~] capabilities, [~~and~~] commitment, care practices, and participation in the RAC to serve as a designated facility.

(47) Designation appeal--The process for a hospital that has been downgraded or denied a specific level of designation to appeal the designation decision.

(48) Designation survey--An on-site or virtual review of a facility applicant to determine if it meets the criteria for a particular level of designation.

(49) Dispatch--The sending of individuals and equipment by EMS for assessment, prompt efficient treatment, and transportation, if required, of a sick or injured patient.

(50) [~~(26)~~] Distance learning--[-]A method of learning remotely without being in regular face-to-face contact with an instructor in the classroom.

(51) [~~(27)~~] Diversion--[-]A procedure put into effect by a health care [~~trauma~~] facility notifying EMS [~~to ensure appropriate patient care~~] when that facility is unable to provide the level of care demanded by a [~~trauma~~] patient's injuries or condition due to lack of capacity or capabilities, or when the facility has temporarily exhausted its resources and requesting patients be transported to another facility.

(52) [~~(28)~~] Emergency call--[-]A [~~new~~] call or other similar communication from a member of the public, as part of a 9-1-1 system or other emergency access communication system, made to obtain emergency medical services.

(53) [~~(29)~~] Emergency care attendant (ECA)--[-]An individual who is certified by the department as minimally proficient in performing [~~to provide~~] emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(54) [~~(30)~~] Emergency medical services (EMS)--[-]Services used to respond to an individual's perceived need for medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(55) EMS medical director--The licensed physician who provides medical supervision to the EMS personnel of a licensed EMS provider or a recognized first responder organization (FRO) under the terms of the Medical Practice Act (Texas Occupations Code Chapters 151 - 165) and rules promulgated by the Texas Medical Board; may also be called "off-line medical control."

(56) [~~(31)~~] Emergency medical services [~~(EMS)~~] operator--An individual[~~-A person~~] who, as an employee of a public or private agency, [~~as that term is defined by Health and Safety Code, §771.001,~~] receives emergency calls and may provide medical information or medical instructions to the public during those emergency calls.

[~~(32) Emergency medical services and trauma care system - An arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.~~]

(57) [~~(33)~~] Emergency medical services [~~(EMS)~~] personnel--[-]

(A) emergency care attendant (ECA);

(B) emergency medical technician (EMT);

(C) advanced emergency medical technician (AEMT);

[~~(D) emergency medical technician intermediate (EMT-I); or~~]

(D) [~~(E)~~] emergency medical technician-paramedic (EMT-P); or

(E) [~~(F)~~] licensed paramedic (LP).

(58) [~~(34)~~] Emergency medical services[~~(EMS)~~] provider--[-]A person who uses, operates, or maintains EMS vehicles and EMS personnel to provide emergency medical services [~~EMS. See §157.11 of this title regarding fee exemption~~].

(59) Emergency medical services times--

(A) Time of call--The date and time a phone rings at a public safety answering point (PSAP) or other designated entity, requesting EMS services.

(B) Dispatch time--The date and time a responding EMS provider is notified by dispatch.

(C) En route--The date and time the EMS vehicle starts moving to respond.

(D) On scene--The date and time a responding EMS vehicle stops moving when it arrives at the location of the response.

(E) At patient side--The date and time the EMS personnel of the responding EMS vehicle arrives at the patient's side.

(F) Transport--The date and time the responding EMS vehicle leaves the location of the response and starts moving toward the destination.

(G) Arrival time--The date and time the responding EMS vehicle arrives with the patient at the destination or transfer point.

(H) Transfer of care--The date and time patient care is transferred to the destination health care staff or transfer point of health care.

(I) Back in service--The date and time the EMS vehicle is back in service and available for another response.

(60) Emergency medical services vehicle--

(A) basic life support (BLS) vehicle;

(B) advanced life support (ALS) vehicle;

(C) mobile intensive care unit (MICU) vehicle;

(D) MICU rotor-wing and MICU fixed-wing air medical vehicles; or

(E) specialized emergency medical service vehicle.

[~~(35) Emergency medical services (EMS) volunteer provider--An EMS provider that has at least 75% of the total personnel as volunteers and is a nonprofit organization. See §157.11 of this title regarding fee exemption.~~]

(61) [~~(36)~~] Emergency medical services [~~(EMS)~~] volunteer--[-]EMS personnel who provide emergency prehospital or interfacility care in affiliation with a licensed EMS provider or a registered FRO [~~First Responder organization~~] without remuneration, except for reimbursement for expenses.

(62) Emergency medical services volunteer provider--An EMS provider with at least 75 percent of personnel as volunteers and is a nonprofit organization. See §157.11 of this chapter regarding fee exemption.

(63) [~~(37)~~] Emergency medical technician (EMT)--[-]An individual [~~who is~~] certified by the department as minimally proficient in performing [~~to perform~~] emergency prehospital care [~~that is~~] necessary for basic life support and [~~that~~] includes the control of hemorrhaging and cardiopulmonary resuscitation.

(64) [~~(38)~~] Emergency medical technician-paramedic (EMT-P)--[-] An individual [~~who is~~] certified by the department as minimally proficient in performing [~~to provide~~] emergency prehospital or interfacility care in health care facility's emergency or urgent care clinical setting, including a hospital emergency room and a freestanding emergency medical care facility, by providing advanced life support that includes initiation and maintenance under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

[~~(39) Emergency medical services vehicle.~~]

[(A) basic life support (BLS) vehicle;]

[(B) advanced life support (ALS) vehicle;]

[(C) mobile intensive care unit (MICU);]

[(D) MICU rotor wing and MICU fixed wing air medical vehicles; or]

[(E) specialized emergency medical service vehicle.]

[(40) Emergency Medical Task Force (EMTF) - A unit specially organized to provide coordinated emergency medical response operation systems during large scale EMS incidents.]

(65) [(41)] Emergency prehospital care--[-]Care provided to the sick and injured within a health care facility's emergency or urgent care clinical setting, including a hospital emergency room and [a] freestanding emergency medical care facility, before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with [that]transportation.

(66) Event--A variation from the established care management guidelines or system operations such as delays in response, delays in care, hospital event such as complications, or death. An event or variation in care creates a need for review of the care or system processes to identify opportunities for improvement.

(67) Event resolution--An event, as described in paragraph (66) of this section, that is identified and reviewed to determine the impact to the patient and if opportunities for improvement in care or the system exist, with a specific action plan tracked with data analysis to demonstrate the action plan created the desired change to achieve the desired goal, and improved outcomes are sustained.

(68) Extraordinary emergency--A serious, unexpected event or situation requiring immediate action to reduce or minimize disruption to established health care services within the EMS and trauma care system.

(69) [(42)] Field [Facility] triage--[-]The process of determining which [assigning patients to an appropriate trauma] facility is most appropriate for patients based on injury severity, time-sensitive disease factors, and facility availability. Refer to paragraph (104) of this section.

(70) Financially indigent--An uninsured or underinsured patient unable to pay for the trauma services rendered based on the hospital's eligibility system.

(71) First responder organization (FRO)--A group or association of certified EMS personnel that work in cooperation with a licensed EMS provider.

(72) [(43)] Fixed location--[-]The address as it appears on the initial or [and/or] renewal EMS provider license application in which the patient care records and administrative departments are [offices will be] located.

[(44) General trauma facility - A hospital designated by the department as having met the criteria for a Level III and Level IV trauma facility as described in §157.125 of this title. General trauma facilities provide resuscitation, stabilization, and assessment of injury victims and either provide treatment or arrange for appropriate transfer to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.]

(73) [(45)] Governmental entity--[-]A county, a city or town, a school district, or a special district or authority created in accordance with the Texas Constitution, including a rural fire prevention district, an emergency services district, a water district, a municipal utility district, and a hospital district.

(74) Governor's EMS and Trauma Advisory Council (GETAC)--An advisory council appointed by the Governor of Texas that provides professional recommendations to the EMS/Trauma System Section regarding EMS and trauma system development and serves as a forum for stakeholder input.

[(46) Health care entity - A first responder, EMS provider, physician, nurse, hospital, designated trauma facility, or a rehabilitation program.]

(75) [(47)] Inactive EMS provider status--[-]The period of time when a licensed EMS provider is not able to respond [or response ready] to an EMS [an emergency or non-emergency medical] dispatch.

(76) [(48)] Industrial ambulance--[-]Any vehicle owned and operated by an industrial facility as defined in the Texas Transportation Code[,] §541.201[,] and used for initial transport or transfer of company employees who become urgently ill or injured on company premises to an appropriate health care [medical] facility.

(77) Injury severity score (ISS)--An anatomical scoring system providing an overall score for trauma patients. The ISS standardizes the severity of trauma injuries based on the three worst abbreviated injury scales (AIS) from the body regions. These regions are the head and neck, face, chest, abdomen, extremity, and external as defined by the Association for the Advancement of Automotive Medicine (AAAM). The highest abbreviated injury score in the three most severely injured body regions have the scores squared, then added together to define the patient's ISS.

(A) ISS of 1-9 is considered moderate trauma injury.

(B) ISS of 10-15 is a major trauma injury.

(C) ISS of 16-24 is a severe trauma injury.

(D) ISS of 25 or greater is a critical trauma injury.

(78) [(49)] Interfacility care--[-]Care provided while transporting a patient between health care [medical] facilities.

[(50) Lead trauma facility - A trauma facility which usually offers the highest level of trauma care in a given trauma service area, and which includes receipt of major and severe trauma patients transferred from lower level trauma facilities. It also includes on-going support of the regional advisory council and the provision of regional outreach, prevention, and trauma educational activities to all trauma care providers in the trauma service area regardless of health care system affiliation.]

(79) [(51)] Legal entity name--[-]The name of the lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual. Has legal capacity to:

(A) enter into agreements or contracts;

(B) assume obligations;

(C) incur and pay debts;

(D) sue and be sued in its own right; and

(E) to be accountable for illegal activities.

(80) Level of harm--A classification system defining the impact of an event to the patient and assists in defining the urgency of review. There are five levels of harm used to define the impact to the patient as defined by the American Society for Health Care Risk Management:

(A) No harm--The patient was not symptomatic or no symptoms were detected, and no treatment or intervention was required.

(B) Mild harm--The patient was symptomatic, symptoms were mild, loss of function or harm was either minimal or intermediate but short-term, and no interventions or only minimal interventions were needed.

(C) Moderate harm--The patient was symptomatic, required intervention such as additional operative procedure, therapeutic treatment, or an increased length of stay, required a higher level of care, or may experience long-term loss of function.

(D) Severe harm--The patient was symptomatic, required life-saving or other major medical or surgical intervention, or may experience shortened life expectancy, and may experience major permanent or long-term loss of function.

(E) Death harm--The event was a contributing factor in the patient's death.

(81) Levels of review--Describes the levels of performance improvement review for an event in the designation program's quality improvement or performance improvement patient safety (PIPS) plan. There are four levels of review:

(A) Primary level of review--Initial investigation of identified events by the facility's designation program performance improvement personnel to capture the event details and to validate and document the timeline, contributing factors, and level of harm. The program manager usually addresses system issues with no level of harm, including identifying the opportunities for improvement and action plan appropriate for the event, and keeping the program medical director updated. This must be written in the facility's performance improvement plan.

(B) Secondary level of review--The level of review by the facility's designation program medical director in which the program personnel prepare the documentation and facts for the review. The program medical director reviews the documentation and either agrees or corrects the level of harm, defines the opportunities for improvement with action plans, or refers to the next level of review.

(C) Tertiary level of review--The third level of review by the facility's designation program to evaluate care practices and compliance to defined management guidelines, identify opportunities for improvement, and define a plan of correction (POC). Minutes capturing the event, discussion, and identified opportunities for improvement with action plans must be documented.

(D) Quaternary level of review--The highest level of review, which may be conducted by an entity external to the facility program as an element of the performance improvement plan. The event, review, and discussion of the event, and identified opportunities for improvement with action plans must be documented.

(82) [~~(52)~~] Licensee--[~~-~~]A person who holds a current paramedic license from the department, [~~Texas Department of State Health Services (department)~~] or a person who uses, maintains, or operates EMS vehicles and provides EMS personnel to provide emergency medical services, [~~EMS~~] and who holds an EMS provider license from the department.

(83) [~~(53)~~] Major Level II trauma facility--[~~-~~]A hospital surveyed [~~designated~~] by a department-approved survey organization meeting the state designation requirements and ACS standards [~~the department as having met the criteria~~] for a Level II trauma facility as described in §157.125 and §157.126 of this chapter [~~§157.125 of this title~~]. [~~Major trauma facilities provide similar services to the Level I trauma facility although research and some medical specialty areas are not required for Level II facilities, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.~~]

(84) [~~(54)~~] Major trauma patient--An individual[~~-A person~~] with injuries, or potential injuries,[~~severe enough to~~] who benefits [~~benefit~~] from treatment at a trauma facility. The patient [~~These patients~~] may or may not present with alterations in vital signs or level of consciousness, or with obvious, significant injuries [~~(see severe trauma patient)~~], but has [~~they have~~] been involved in an event [~~incident which results in~~] that produces a high index of suspicion for significant injury and [~~and/or~~] potential disability. Co-morbid factors such as age or [~~and/or~~] the presence of significant preexisting medical conditions [~~problems should~~] are also [~~be~~] considered. The patient initiates a system [~~These patients should initiate a system's or health care entity's trauma~~] response to[~~,~~] include field [~~including prehospital~~] triage to the most appropriate [~~a~~] designated trauma facility. For performance improvement purposes, the patient is [~~these patients are~~] also identified retrospectively by an ISS of 10-15 [~~injury severity score of 9 or above~~].

(85) [~~(55)~~] Medical control--[~~-~~]The supervision of prehospital EMS [~~emergency medical service~~] providers and FROs by a licensed physician. This encompasses on-line (direct voice contact) and off-line (written protocol and procedural review).

[~~(56) Medical Director - The licensed physician who provides medical supervision to the EMS personnel of a licensed EMS provider or a recognized First Responder Organization under the terms of the Medical Practices Act (Occupations Code, Chapters 151 - 165 and rules promulgated by the Texas Medical Board. Also may be referred to as off-line medical control.~~]

(86) [~~(57)~~] Medical oversight--[~~-~~]The assistance and management given to health care providers and [~~and/or~~] entities involved in regional EMS/trauma systems planning by a physician or group of physicians designated to provide technical assistance to the EMS provider or FRO medical director.

(87) [~~(58)~~] Medical supervision--[~~-~~]Direction given to EMS [~~emergency medical services~~] personnel by a licensed physician under the terms of the Medical Practice Act[~~,~~] (Texas Occupations Code[~~,~~] Chapters 151 - 165) and rules promulgated by the Texas Medical Board[~~pursuant to the terms of the Medical Practice Act~~].

(88) [~~(59)~~] Mobile intensive care unit [~~(MICU)~~]--[~~-~~]A vehicle [~~that is~~] designed for transporting the sick or injured, [~~and that~~] meeting [~~meets~~] the requirements of the advanced life support vehicle, and [~~which~~] having [~~has~~] sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way communication with at least one paramedic on the vehicle when providing EMS.

(89) National EMS Compact--The agreement among states to allow the day-to-day movement of EMS personnel across state boundaries.

(90) National EMS Information System (NEMSIS)--A universal standard for how patient care information resulting from an EMS response is collected.

(91) National Trauma Data Bank (NTDB)--The national repository for trauma registry data, defined by the ACS with inclusion criteria and data elements required for submission.

(92) National Trauma Data Standards (NTDS)--The American College of Surgeons' standard data elements with definitions re-

quired for submission to the NTDB, as defined in paragraph (91) of this section.

(93) Non-contiguous emergency department--A hospital emergency department located in a separate building, not contiguous with the designated facility. May be referred to as a satellite emergency department.

(94) [~~(60)~~]Off-line medical director [~~direction~~]-- [-]The licensed physician who provides approved protocols and medical supervision to the EMS personnel of a licensed EMS provider under the terms of the Medical Practice [~~Practices~~] Act (Texas Occupations Code[~~,~~] Chapters 151 - 165) and [~~a~~] rules promulgated by the Texas Medical Board [~~(22 Texas Administrative Code, §197.3)~~].

(95) [~~(61)~~] On-line [~~Online~~] course--[-]A directed learning process[~~,~~] comprised of educational information (articles, videos, images, web links), communication (messaging, discussion forums) for virtual learning, [~~with a process~~] and [~~some way to~~] measures [~~measure~~] to evaluate the student's [~~students'~~] knowledge.

(96) [~~(62)~~] Operational name--[-]Name under which the business or operation is conducted and presented to the world.

(97) [~~(63)~~] Operational policies--[-]Policies and procedures that [~~which~~] are the basis for the provision of EMS and that [~~which~~] include[~~, but are not limited to~~] such areas as vehicle maintenance;[~~,~~] proper maintenance and storage of supplies, equipment, medications, and patient care devices; complaint investigations [~~investigation~~];[~~,~~] multi-casualty [~~multicasualty~~] incidents;[~~,~~] and hazardous materials; but do not include personnel or financial policies.

(98) Operations Committee--Committee serving as the facility's trauma program administrative oversight for designation and responsible for the approval of trauma management guidelines, operational plan, and procedures within the program or system having the potential to impact care practices or designation.

(99) Operative or surgical intervention--Any surgical procedure provided to address trauma injuries for patients taken directly from the scene, emergency department, or other hospital location to an operating suite for patients meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria.

(100) [~~(64)~~] Out of service vehicle--[-]The period of time when a licensed EMS [~~Provider~~] vehicle is unable to respond to [~~or be response ready for~~] an emergency or non-emergency response.

(101) Performance improvement and patient safety (PIPS) plan--The written plan and processes for evaluating patient care, system response, and adherence to established patient management guidelines; defining variations from care or system response; assigning the level of harm and level of review; identifying opportunities for improvement; and developing the CAP. The CAP outlines data analysis and measures to track the action plan to ensure the desired changes are met and maintained to resolve the event. The medical director, program manager, and administrator have the authority and oversight over PIPS.

(102) Plan of correction (POC)--A report submitted to the department by the facility detailing how the facility will correct one or multiple requirements defined as "not met" during a trauma designation survey review that is reported in the survey summary or documented in the self-attestation.

(103) Practical exam--An evaluation that assesses the person's ability to perceive instructions and perform motor responses, also referred to as a psychomotor exam.

[~~(65) Person - An individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.~~]

(104) [~~(66)~~] Prehospital triage--[-]The process of identifying medical or injury [~~medical/injury~~] acuity or the potential for severe injury based upon physiological criteria, injury patterns, and [~~and/or~~] high-energy mechanisms and transporting patients to a facility appropriate for the [~~their~~] patient's medical or injury [~~medical/injury~~] needs. Prehospital triage for injured patients or time-sensitive disease events [~~injury victims~~] is guided by the approved prehospital triage [~~protocol adopted~~] guidelines adopted by the RAC [~~regional advisory council (RAC)~~] and approved by the department. May also be referred to as "field triage" or "prehospital field triage."

[~~(67) Practical exam - Sometime referred to as psychomotor, is an exam that assesses the subject's ability to perceive instructions and perform motor responses.~~]

(105) Primary EMS provider response area--The geographic area in which an EMS agency routinely provides emergency EMS as agreed upon by a local or county governmental entity or by contract.

(106) Primary Level III stroke facility--A hospital designated by the department and meets the department-approved national stroke standards of care for a primary stroke center, participates in its RAC, participates in the regional stroke plan, and submits data as requested by the department.

(107) [~~(68)~~] Protocols--[-]A detailed, written set of instructions by the EMS provider's [~~Provider~~] medical director, which may include delegated standing medical orders, to guide patient care or the performance of medical procedures as approved.

[~~(69) Primary EMS provider response area - The geographic area in which an EMS agency routinely provides emergency EMS as agreed upon by a local or county governmental entity or by contract.~~]

(108) [~~(70)~~] Public safety answering point (PSAP)--[-]The call center responsible for answering calls to an emergency telephone number for ambulance services; sometimes called "public safety access point[~~,~~]" or "dispatch center."

(109) [~~(71)~~] Quality management--[-]Quality assessment [~~assurance~~], quality improvement, and [~~and/or~~] performance improvement activities. See definition of PIPS in paragraph (101) of this section.

(110) Receiving facility--A health care facility to which an EMS vehicle may transport a patient requiring prompt continuous medical care, or a facility receiving a patient being transferred for definitive care.

(111) Recertification--The procedure for renewal of EMS certification.

(112) Reciprocity--The recognition of certification or privileges granted to an individual from another state or recognized EMS system.

(113) [~~(72)~~] Regional Advisory Council (RAC)--[~~-An~~]A nonprofit organization [~~serving as the Department of State Health Services~~] recognized by the department and responsible for system coordination [~~health care coalition responsible~~] for the development, implementation, and maintenance of the regional trauma and emergency health care system within its [~~the~~]geographic jurisdiction of the Trauma Service Area. A RAC [~~Regional Advisory Council~~] must maintain [§]501(c)(3) status.

[(73) Regional EMS/trauma system - A network of health-care providers within a given trauma service area (TSA) collectively focusing on traumatic injury as a public health problem, based on the given resources within each TSA.]

(114) Regional Advisory Council Performance Improvement Plan--A written plan of the RAC's processes to review identified or referred events, identify opportunities for improvement, define action plans and data required to correct the event, and establish measures to evaluate the action plan through to event resolution.

(115) [(74)]Regional medical control--[-]Physician supervision for prehospital EMS [emergency medical services (EMS)] providers in a given trauma service area (TSA) or other geographic area intended to provide standardized oversight, treatment, and transport guidelines, which should, at minimum, follow the RAC's [regional advisory council's] regional EMS/trauma system plan components related to these issues and 22 Texas Administrative Code[,] §197.3 (relating to Off-line Medical Director).

[(75) Recertification - The procedure for renewal of emergency medical services certification.]

[(76) Receiving facility - A facility to which an EMS vehicle may transport a patient who requires prompt continuous medical care.]

[(77) Reciprocity - The recognition of certification or privileges granted to an individual from another state or recognized EMS system.]

(116) [(78)] Relicensure--[-]The procedure for renewal of a paramedic license as described in §157.40 of this chapter [title] (relating to Paramedic Licensure); the procedure for renewal of an EMS provider license as described in §157.11 of this chapter [title].

(117) [(79)] Response pending status--[-]The status of an EMS vehicle that just delivered a patient to a final receiving facility[,] and for which the dispatch center has another EMS response waiting [that EMS vehicle].

(118) [(80)] Response ready--[-]When an EMS vehicle is equipped and staffed in accordance with §157.11 of this chapter [title (relating to Requirements for a Provider License)] and is immediately available to respond to any emergency call 24-hours [24 hours] per day, seven days per week (24/7).

(119) Rural county--A county with a population of less than 50,000 based on the latest estimated federal census population figures.

(120) [(81)] Scope of practice--[-]The procedures, actions, and processes [that an] EMS personnel are authorized to perform as [permitted to undertake in keeping with the terms of their professional license or certification and] approved by the [their] EMS provider's medical director.

(121) Scope of services--The types of services and the resources to provide those services that a facility has available.

(122) [(82)] Severe trauma patient--[-]A person with injuries or potential injuries defined as high-risk for mortality or disability and meeting trauma activation guidelines and meeting NTDB registry inclusion criteria benefitting from definitive [that require] treatment at a designated [tertiary] trauma facility. These patients may be identified by an alteration in vital signs or [and/or] level of consciousness or by the presence of significant injuries and must [shall] initiate a [system's and/or health care entity's highest] level of trauma response [including prehospital triage to a designated trauma] defined by the facility, including prehospital triage to a designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an ISS [injury severity score] of 16-24 [15 or above].

[(83) Shall - Mandatory requirements.]

[(84) Site survey - An on-site review of a trauma facility applicant to determine if it meets the criteria for a particular level of designation.]

(123) Simulation training--Training, typically scenario-based or skill-based, utilizing simulated patients or system events to improve or assess knowledge, competencies, or skills.

(124) [(85)] Sole provider--[-]The only licensed EMS [emergency medical service] provider in a geographically contiguous service area and in which the next closest provider is greater than 20 miles from the limits of the area.

(125) [(86)] Specialized EMS [emergency medical services] vehicle--[-]A vehicle [that is] designed for responding to and transporting sick or injured persons by any means of transportation other than by standard automotive ground ambulance or rotor or fixed-wing aircraft [fixed wing air craft] and that has sufficient staffing, equipment, and supplies to provide for the specialized needs of the patient transported. This category includes[, but is not limited to,] watercrafts [water craft], off-road vehicles, and specially designed, configured, or equipped vehicles used for transporting special care patients such as critical neonatal or burn patients.

(126) [(87)] Specialty resource centers--[-]Entities caring [that care] for specific types of patients such as [trauma,] pediatric, [stroke,] cardiac, [hospitals] and burn injuries [units] that have received certification, categorization, verification, or other forms [form] of recognition by an appropriate agency regarding the [their] capability to definitively treat these types of patients.

(127) [(88)] Staffing plan--[-]A document [which] indicating [indicates] the overall working schedule patterns of EMS or hospital personnel.

(128) [(89)] Standard of care--[-]Care equivalent to what any reasonable, prudent person of like education or certification level would have given in a similar situation, based on [locally, regionally and nationally] documented, evidence-based practices or adopted standard EMS [emergency medical services] curricula as adopted by reference in §157.32 of this chapter; [title (relating to Emergency Medical Services Training and Course Approval)] also refers to the documented standards of care reflecting evidence-based practice.

(129) State EMS Registry--State repository for the collection of EMS response data as defined in Chapter 103 of this title (relating to Injury Prevention and Control).

(130) State Trauma Registry--Statewide database housed within the department; responsible for the collection, maintenance, and evaluation of medical and system information related to required reportable events as defined in Chapter 103 of this title.

(131) Stroke--A time-sensitive medical condition occurring when the blood supply to the brain is reduced or blocked, caused by a ruptured blood vessel or clot, preventing brain tissue oxygenation.

(132) Stroke activation--The process of mobilizing the stroke care team when a patient screens positive for stroke symptoms; may be referred to as a "stroke alert" or "code stroke."

(133) Stroke facility--A hospital that has successfully completed the designation process and is capable of resuscitating and stabilizing, transferring, or providing definitive treatment to stroke patients and actively participates in its local RAC and system plan.

(134) Stroke medical director (SMD)--A physician meeting the department's requirements for the stroke medical director and having the authority and oversight for the stroke program, including the performance improvement process, data management, and outcome reviews.

(135) Stroke program manager (SPM)--A registered nurse meeting the requirements for the stroke program manager and having the authority and oversight for the stroke program, including the performance improvement process, data management, and outcome reviews.

(136) [~~(90)~~] Substation--[-]An EMS provider station location, [~~that is~~] not the fixed station, and [~~which is~~] likely to provide rapid access to a location to which the EMS vehicle may be dispatched.

(137) 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 technology as defined in Texas Occupations Code §111.001.

(138) Transport mode--As documented on the patient care record, the usage of emergency warning equipment when responding to an EMS dispatch and when transporting a patient to a receiving facility.

(139) [~~(91)~~] Trauma--[-]An injury or wound to a living body caused by the application of an external force or violence, including burn injuries, and meeting the trauma program's trauma activation guidelines[~~. Poisonings, near-drownings and suffocations, other than those due to external forces are to be excluded from this definition~~].

(140) Trauma activation guidelines--Established criteria identifying the potential injury risk to the human body and defining the resources and response times required to evaluate, resuscitate, and stabilize the trauma patient. The guidelines must meet the national recommendations, but each trauma program defines the activation guidelines for the facility. The facility may choose to have one activation level, two activation levels, or three activation levels.

(A) The highest level of trauma activation is commonly based on physiological changes in the patient's level of consciousness, airway or potential respiratory compromise, hypotension or signs of shock, significant hemorrhage, or evidence of severe trauma.

(B) The second level of trauma activation is commonly based on the patient's physiological stability with anatomical injuries or mechanisms of injury having the potential for serious injuries.

(C) The third level of trauma activation is designed for low-energy or single-system injuries that may require specialty service evaluation and intervention.

(141) Trauma administrator--Administrator responsible for the facility oversight, funding, contracts, and collaborative leadership of the program, and serves as an interface with the chief executive team as defined by the facility's organizational structure.

(142) Trauma and emergency health care system plan--The inclusive system that refers to the care rendered after a traumatic injury or time-sensitive disease or illness where the optimal outcome is the critical determinant. The system components encompass special populations, epidemiology, risk assessments, surveillance, regional leadership, system integration, business or finance models, prehospital care, definitive care facilities, system coordination for patient flow, prevention and outreach, rehabilitation, emergency preparedness and response, system performance improvement, data management, and research. These components are integrated into the regional self-assessment and system plan.

(143) Trauma care--Care provided to an injured patient meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria and the continuum of care throughout the system, including discharge and follow-up care or transfer.

(144) Trauma Designation Review Committee--Committee responsible for reviewing trauma designation appeals, reviewing requirement exception and waiver requests, and outlining specific requirements not met in order to identify potential opportunities to improve future rule amendments.

(145) [~~(92)~~] Trauma facility--[-] A hospital that has successfully completed the designation process, is capable of resuscitating and stabilizing, transferring, or [~~stabilization and/or~~] providing definitive treatment to patients meeting trauma activation criteria, [~~of critically injured persons~~] and actively participates in its local RAC [~~a regional EMS/trauma~~] and the RAC system plan development.

(146) Trauma medical director (TMD)--A physician meeting the requirements and demonstrating the competencies and leadership for the oversight and authority of the trauma program as defined by the level of designation and having the authority and oversight for the trauma program, including the performance improvement and patient safety processes, trauma registry, data management, peer review processes, outcome reviews, and participation in the RAC and system plan development.

(147) Trauma patient--Any injured person who has been evaluated by a physician, a registered nurse, or EMS personnel, and found to require medical care in a trauma facility based on local or national medical standards.

(148) [~~(93)~~] Trauma [~~nurse coordinator/trauma~~] program manager (TPM)--[-]A registered nurse [~~with demonstrated interest, education, and experience in trauma care and~~] who[~~,~~] in partnership with the TMD [~~trauma medical director~~] and hospital administration[~~,~~] is responsible for oversight and authority [~~coordination~~] of the trauma program as defined by the level of designation, including [~~care at a designated trauma facility. This coordination should include active participation in~~] the trauma performance improvement and patient safety processes [~~program~~], trauma registry, data management, injury prevention, outreach education, outcome reviews, and research as appropriate to the level of designation [~~the authority to positively impact trauma care of trauma patients in all areas of the hospital, and targeted prevention and education activities for the public and health care professionals~~].

[~~(94) Trauma patient - Any critically injured person who has been evaluated by a physician, a registered nurse, or emergency medical services personnel, and found to require medical care in a trauma facility based on local, regional or national medical standards.~~]

(149) Trauma Quality Improvement Program (TQIP)--The ACS risk-adjusted benchmarking program using submitted data to evaluate specific types of injuries and events to compare cohorts' outcomes with other trauma centers; assisting in defining opportunities for improvement in specific patient cohorts.

(150) Trauma registrar--An individual meeting the requirements and whose job responsibilities include trauma patient data abstraction, trauma registry data entry, injury coding, and injury severity scoring, in addition to registry report writing and data management skills specific to the trauma registry and trauma program.

(151) [~~(95)~~] Trauma registry--[-]A trauma facility [~~statewide~~] database capturing required elements of trauma care for

each patient. [which documents and integrates medical and system information related to the provision of trauma care by health care entities.]

(152) [(96)] Trauma service area [Service Area]--[-]Described in §157.122 of this subchapter (relating to Trauma Service Areas) [An organized geographical area of at least three counties administered by a regional advisory council for the purpose of providing prompt and efficient transportation and/or treatment of sick and injured patients].

(153) Uncompensated trauma care--The sum of "charity care" and "bad debt." Contractual adjustments in reimbursement for trauma services based upon an agreement with a payor (including Medicaid, Medicare, Children's Health Insurance Program (CHIP), or other health insurance programs) are not uncompensated trauma care.

(154) Urban county--A county with a population of 50,000 or more based on the latest estimated federal census population figures.

(155) Verification--Process used by the ACS to review a facility seeking trauma verification to validate the defined standards are met with documented compliance for successful trauma center verification. If a Level I or Level II facility is not verified by the ACS, the department cannot designate the facility.

(156) [(97)] When in service--[-]The period of time when an EMS vehicle is responding to an EMS dispatch, at the scene, or en route [when enroute] to a facility with a patient.

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) 535-8538

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SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §§157.123, 157.130, 157.131

STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code Chapter 773 (Emergency Health Care Act), which authorizes the Executive Commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code Chapter 773, Subchapter G, which provides for the authority to adopt rules related to emergency medical services and trauma services; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals are authorized by Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 773 and 1001.

§157.123. Regional Emergency Medical Services/Trauma Systems.

§157.130. Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, Trauma Facilities, and Trauma Care System Fund.

§157.131. Designated Trauma Facility and Emergency Medical Services Account.

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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25 TAC §§157.123, 157.125, 157.126, 157.128, 157.130

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Health and Safety Code Chapter 773 (Emergency Health Care Act), which authorizes the Executive Commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code Chapter 773, Subchapter G, which provides for the authority to adopt rules related to emergency medical services and trauma services; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendments and new sections are authorized by Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 773 and 1001.

§157.123. Regional Advisory Councils.

(a) The department recognizes a Regional Advisory Council (RAC) as the coordinating entity for the development and advancement of the regional trauma and emergency health care system within the defined trauma service area (TSA) as described in §157.122 of this subchapter (relating to Trauma Service Areas).

(1) The department recognizes only one RAC for each TSA.

(2) Trauma, prehospital, perinatal, stroke, cardiac, disaster response, and emergency health care stakeholders in the TSA must be eligible for participation or membership in the RAC.

(b) A RAC must meet the following requirements to be recognized as a RAC:

(1) maintain incorporation as an entity exempt from federal income tax under §501(a) of the United States Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code, and to be eligible to receive, distribute, and utilize the emergency medical services (EMS), uncompensated care, and TSA allotments;

(2) submit required documentation to the department that includes, at a minimum, the following:

(A) a summary of regional trauma, prehospital, pediatric, geriatric, perinatal, stroke, cardiac, and emergency health care system activities;

(B) evidence of an annual summary of the EMS, trauma, and emergency health care system performance improvement plan; and

(C) a completed regional self-assessment by the end of each odd state fiscal year, and a current trauma and emergency health care system plan by the end of each even state fiscal year, with documented evidence the performance criteria are met;

(3) maintain external financial audits and financial statements as defined by the department; and

(4) maintain a current website to communicate with regional stakeholders.

(c) Each RAC must develop and maintain a regionally specific comprehensive trauma and emergency health care system plan. The plan must include all counties within the TSA and must be based on current industry standards and guidelines.

(1) The system plan must address the following elements:

(A) epidemiology data resources available;

(B) integration of regional stakeholders, identified coalitions, and community partners pertinent to the priorities and needs identified through the regional self-assessment;

(C) regional guidelines for prehospital field triage and destination, treatment, transport, and transfer of patients with time-sensitive health care injuries or illnesses;

(D) prevention and outreach activities guided by data available;

(E) system coordination and patient flow;

(F) meaningful participation in regional disaster preparedness, planning, response, recovery, after-action review, data tracking needs, and support of the hospital preparedness stakeholders, including the identified health care coalition and the department;

(G) identification of system-wide health care education sponsored or coordinated through the RAC;

(H) execution of a systems performance improvement plan that aligns with the state system performance improvement plan, and includes regional outcome data;

(I) current pediatric readiness capabilities that identifies opportunities to improve pediatric readiness within the region;

(J) integration of public health and business community stakeholders; and

(K) guidelines to support regional research projects.

(2) All health care entities and identified coalition partners should participate in the regional planning process.

(d) A RAC must collect from each hospital within the TSA continual data to facilitate emergency preparedness and response planning for a public health disaster, public health emergency, or outbreak of communicable disease, and report the data to the department at least monthly via the electronic reporting system specified by the department, consistent with Texas Health and Safety Code §§81.027, 81.0443, 81.0444, and 81.0445.

(1) Unless otherwise directed by the department, the data collected must include all adult and pediatric data specific to:

(A) general beds available and occupied;

(B) intensive care unit (ICU) beds available and occupied;

(C) emergency department visits in the last 24 hours;

(D) hospital admissions in the last 24 hours;

(E) ventilators available and in use; and

(F) hospital deaths in the last 24 hours.

(2) The department may request more or less frequent reporting or may request different information from individual RACs to adequately prepare and respond to any public health disaster, public health emergency, outbreak of communicable disease, or federal reporting requirement relating to emergency preparedness and response.

(3) RACs must make the collected data publicly available by posting the data on the RAC's internet website during any public health disaster or public health emergency and, when asked by the department, during outbreaks not associated with a public health disaster or emergency.

(e) A RAC with at least one county within the region located on the international border of Texas and at least one county within the region adjacent to the Gulf of Mexico must provide guidelines and protocols related to trauma patient transfer and related services meeting the following requirements.

(1) The RAC must develop an advisory committee composed of equal representation from designated trauma facilities within the RAC.

(2) The advisory committee must develop regional protocols for managing the dispatch, triage, transport, and transfer of patients.

(A) The advisory committee must periodically review patient transfers ensuring the applicable protocols are met.

(B) Each hospital and EMS provider operating within this TSA must collect and report to the RAC data on patients transferred outside of the TSA following the developed and approved regional protocols.

(C) The advisory committee and activities must be integrated into the regional trauma and health care system plan.

(f) A RAC must meet the defined performance criteria to ensure the mission of the regional system is maintained. A RAC must:

(1) notify the department and RAC membership within five days of the loss of capabilities to maintain the infrastructure to oversee and maintain the regional systems as required by the provisions within subsections (a) and (b) of this section or the department contract;

(2) provide the department with a plan of correction (POC) no more than 90 days from the onset of the deficiency for the RAC; and

(3) comply with the provisions of subsections (a) and (b) of this section, all current state and system standards as described in this chapter, and all guidelines and procedures as set forth in the regional trauma and emergency health care system plan.

(g) If a RAC chooses to relinquish services, it must provide at least a 30-day written advance notice to the department, all RAC membership, RAC coalition partners, and county judges within the impacted TSA.

(1) The RAC must submit a written plan to the department for approval before the 30-day notice to relinquish services.

(2) The RAC funding and assets must be dissolved in accordance with state and federal requirements.

(3) The department must consider options of realigning the TSA with another RAC to continue services.

(h) The department has the authority to schedule conferences, in-person or virtual, with 10-calendar days advanced notice, to review, inspect, evaluate, and audit all RAC documents to validate the department RAC performance criteria are met.

(i) RACs must maintain virtual options for stakeholder participation in committees or other activities.

§157.125. Requirements for Trauma Facility Designation Effective Through August 31, 2025.

(a) The [~~Office of~~] Emergency Medical Services (EMS)/Trauma Systems Section recommends [~~Coordination office) shall recommend~~] to the Commissioner of the Department of State Health Services (commissioner) the designation of an applicant [~~applicant/healthcare~~] facility (facility) as a trauma facility at the level [~~level(s)~~] for each location of a facility the department [~~office~~] deems appropriate. Trauma designation surveys conducted on or before August 31, 2025, are evaluated on the requirements of this section. For surveys conducted on or after September 1, 2025, see §157.126 of this subchapter (relating to Trauma Facility Designation Requirements Effective on September 1, 2025) for the requirements.

(1) Comprehensive (Level I) trauma facility designation--The facility, including a free-standing children's facility, meets the current American College of Surgeons (ACS) essential criteria for a verified Level I trauma center; meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate Regional Advisory Council (RAC); has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the State Trauma [~~Texas EMS/Trauma~~] Registry.

(2) Major (Level II) trauma facility designation--The facility, including a free-standing children's facility, meets the current ACS essential criteria for a verified Level II trauma center; meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the State Trauma [~~Texas EMS/Trauma~~] Registry.

(3) Advanced (Level III) trauma facility designation--The facility meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the State Trauma [~~Texas EMS/Trauma~~] Registry. A free-standing children's facility, in addition to meeting the requirements listed in this section, must meet the current ACS essential criteria for a verified Level III trauma center.

(4) Basic (Level IV) trauma facility designation--The facility meets the "Basic Trauma Facility Criteria" in subsection (y) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the State Trauma [~~Texas EMS/Trauma~~] Registry.

(b) A health care [~~healthcare~~] facility is defined in this subchapter [~~under these rules~~] as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license.

[~~(1)~~] Each location is [~~shall be~~] considered separately for designation and the department [~~Department of State Health Services (department)~~] will determine the designation level for that location, based on, but not limited to, the location's own resources and levels of care capabilities; Trauma Service Area (TSA) capabilities; and the essential criteria and requirements outlined in subsection (a)(1) - (4) of this section. The final determination of the level [~~level(s)~~] of designation may not be the level [~~level(s)~~] requested by the facility.

[~~(2) A facility with multiple locations that is applying for designation at one location shall be required to apply for designation at each of its other locations where there are buildings where inpatients receive hospital services and such buildings are collectively covered under a single hospital's license.~~]

(c) The designation process consists [~~shall consist~~] of three phases.

(1) First phase--The application phase begins with submitting to the department [~~office~~] a timely and sufficient application for designation as a trauma facility and ends when the survey report is received by the department [~~office~~].

(2) Second phase--The review phase begins with the department's [~~office's~~] review of the survey report and ends with its recommendation to the commissioner whether [~~or not~~] to designate the facility and at what level [~~level(s)~~]. This phase also includes an appeal procedure governed by the department's rules for a contested case hearing and by Texas Administrative Procedure Act, Texas Government Code[~~,~~] Chapter 2001, and the department's formal hearing procedures in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(3) Third phase--The final phase begins with the commissioner reviewing the recommendation and ends with the commissioner's [~~his/her~~] final decision.

(d) For a facility seeking initial designation, a timely and sufficient application must [~~shall~~] include:

(1) the department's current "Complete Application" form for the appropriate level, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered, or sent by postal services to the department [~~office~~];

(2) full payment of the designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the department [~~office~~];

(4) a trauma designation survey completed within one year of the date of the receipt of the application by the department [~~office~~]; and

(5) a complete survey report, including patient care reviews, that is within 90 [~~180~~] days of the date of the survey and is submitted [~~hand-delivered or sent by postal services~~] to the department [~~office~~].

(e) If a hospital seeking initial designation fails to meet the requirements in subsection (d)(1) - (5) of this section, the application is [~~shall be~~] denied.

(f) For a facility seeking re-designation, a timely and sufficient application must [~~shall~~] include:

(1) the department's current "Complete Application" form for the appropriate level, with all fields correctly and legibly filled-in and all requested documents attached, submitted [~~hand-delivered or sent by postal services~~] to the department [~~office~~] one year before the

expiration of the current designation [~~or greater from the designation expiration date~~];

(2) full payment of the designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the department [~~office~~]; and

(4) a complete survey report, including patient care reviews, that is within 90 [~~180~~] days of the date of the survey and is submitted [~~hand-delivered or sent by postal services~~] to the department [~~office~~] and at least 60 days before the expiration of the current designation [~~no less than 60 days prior to the designation expiration date~~].

(g) If a health care [~~healthcare~~] facility seeking re-designation fails to meet the requirements outlined in subsection (f)(1) - (4) of this section, the original designation will expire on its expiration date.

(h) The department's [~~office's~~] analysis of the submitted "Complete Application" form may result in recommendations for corrective action when deficiencies are noted and must [~~shall also~~] include a review of:

(1) the evidence of current participation in RAC and regional [~~RAC/regional~~] system planning; and

(2) the completeness and appropriateness of the application materials submitted, including the submission of a non-refundable application fee as follows:

(A) for Level I and Level II trauma facility applicants, the fee is [~~will be~~] no more than $10 per licensed bed with an upper limit of $5,000 and a lower limit of $4,000;

(B) for Level III trauma facility applicants, the fee is [~~will be~~] no more than $10 per licensed bed with an upper limit of $2,500 and a lower limit of $1,500; and

(C) for Level IV trauma facility applicants, the fee is [~~will be~~] no more than $10 per licensed bed with an upper limit of $1000 and a lower limit of $500.

(i) When a "Complete Application" form for initial designation or re-designation from a facility is received, the department [~~office~~] will determine the level it deems appropriate for pursuit of designation or re-designation for each [~~of the~~] facility [~~facility's~~] location [~~locations~~] based on [~~, but not limited to~~]: the facility's resources and levels of care capabilities [~~at each location~~], TSA resources, and the essential criteria for Levels I, II, III, and IV trauma facilities. In general, physician services capabilities described in the application must be in place 24-hours [~~24 hours~~] a day/7 days a week. In determining whether a physician services capability is present, the department may use the concept of substantial compliance that is defined as having said physician services capability at least 90% of the time.

(1) If a facility disagrees with the level [~~level(s)~~] determined by the department [~~office~~] to be appropriate for pursuit of designation or re-designation, it may make an appeal in writing within 60 days to the EMS/Trauma Systems Section director [~~of the office~~]. The written appeal must include a signed letter from the facility's governing board with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected TSA or the citizens of the State of Texas.

~~[(2) The written appeal may include a signed letter (s) from the executive board of its RAC or individual healthcare facilities and/or EMS providers within the affected TSA with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected TSA or the citizens of the State of Texas.]~~

(2) [~~(3)~~] If the department [~~office~~] upholds its original determination, the EMS/Trauma Systems Section director [~~of the office~~] will give written notice of such to the facility within 30 days of its receipt of the applicant's complete written appeal.

(3) [~~(4)~~] The facility may, within 30 days of the department [~~office's~~] sending written notification of its denial, submit a written request for further review. Such written appeal is submitted [~~shall then go~~] to the associate commissioner [~~Assistant Commissioner~~], Consumer Protection Division [~~for Regulatory Services (assistant commissioner)~~].

(j) When the analysis of the "Complete Application" form results in acknowledgement by the department [~~office~~] that the facility is seeking an appropriate level of designation or re-designation, the facility may then contract for the survey, as follows.

(1) Level I and II facilities and all free-standing children's facilities must [~~shall~~] request a survey through the ACS trauma verification program.

(2) Level III facilities must [~~shall~~] request a survey through the ACS trauma verification program or through a department-approved survey [~~comparable~~] organization [~~approved by the department~~].

(3) Level IV facilities must [~~shall~~] request a survey through [~~the ACS trauma verification program, through~~] a department-approved survey [~~comparable~~] organization [~~approved by the department~~], or by a department-credentialed surveyor [~~surveyor(s) active in the management of trauma patients~~].

(4) The facility must [~~shall~~] notify the department [~~office~~] of the date of the planned survey and the composition of the survey team.

(5) The facility is [~~shall be~~] responsible for any expenses associated with the survey.

(6) The department [~~office~~], at its discretion, may appoint a designation coordinator [~~an observer~~] to accompany the survey team. In this event, the cost for the designation coordinator [~~observer~~] is [~~shall be~~] borne by the department [~~office~~].

(k) The survey team composition must [~~shall~~] be as follows.

(1) Level I or Level II facilities must [~~shall~~] be surveyed by a team that is multidisciplinary [~~multi-disciplinary~~] and includes at a minimum: two [~~2~~] general surgeons, an emergency physician, and a trauma nurse all active in the management of trauma patients.

(2) Free-standing children's facilities of all levels must [~~shall~~] be surveyed by a team consistent with current ACS policy and includes at a minimum: a pediatric surgeon,[~~;~~] a general surgeon,[~~;~~] a pediatric emergency physician,[~~;~~] and a pediatric trauma nurse coordinator or a trauma nurse coordinator with pediatric experience.

(3) Level III facilities must [~~shall~~] be surveyed by a team that is multidisciplinary [~~multi-disciplinary~~] and includes at a minimum: a trauma surgeon and a trauma nurse (ACS or department-credentialed), both active in the management of trauma patients.

(4) Level IV facilities must [~~shall~~] be surveyed by a department-credentialed representative, registered nurse, or licensed physician. A second surveyor may be requested by the facility or by the department.

(5) Department-credentialed surveyors must meet the following criteria:

(A) have at least three [~~3~~] years' experience in the care of trauma patients;

(B) be currently employed in the coordination of care for trauma patients;

(C) have direct experience in the preparation for and successful completion of trauma facility verification or designation [~~verification/designation~~];

(D) have successfully completed a department-approved trauma facility site surveyor course and be successfully re-credentialed every four [4] years; and

(E) have current credentials as follows:

(i) for nurses: Trauma Nurses Core Course (TNCC) or Advanced Trauma Course for Nurses (ATCN); and Pediatric Advanced Life Support (PALS) or Emergency Nurses Pediatric Course (ENPC);

(ii) for physicians: Advanced Trauma Life Support (ATLS); and

(iii) have successfully completed a site survey internship.

(6) All members of the survey team, except department staff, must [~~shall~~] come from a TSA outside the facility's location and at least 100 miles from the facility. There must [~~shall~~] be no business or patient care relationship or any potential conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(l) The survey team evaluates [~~shall evaluate~~] the facility's compliance with the designation criteria, by:

(1) reviewing medical records; staff rosters and schedules; process improvement committee meeting minutes; and other documents relevant to trauma care;

(2) reviewing equipment and the physical plant;

(3) conducting interviews with facility personnel;

(4) evaluating compliance with participation in the State Trauma [~~Texas EMS/Trauma~~] Registry; and

(5) evaluating appropriate use of telemedicine capabilities where applicable.

(m) The site survey report in its entirety must [~~shall~~] be part of a facility's performance improvement program and subject to confidentiality as articulated in the Texas Health and Safety Code[~~,~~] §773.095.

(n) The surveyor [~~surveyor(s)~~] must [~~shall~~] provide the facility with a written, signed survey report regarding the [~~their~~] evaluation of the facility's compliance with trauma facility criteria. This survey report must [~~shall~~] be forwarded to the facility within 30 calendar days of the completion date of the survey. The facility is responsible for forwarding a copy of this report to the department [~~office~~] if it intends to continue the designation process.

(o) The department [~~office~~] must [~~shall~~] review the findings of the survey report for compliance with trauma facility criteria.

(1) A recommendation for designation must [~~shall~~] be made to the commissioner based on meeting the designation requirements [~~compliance with the criteria~~].

(2) If a facility does not meet the criteria for the level of designation deemed appropriate by the department [~~office~~], the department [~~office~~] must [~~shall~~] notify the facility of the requirements it must meet to achieve the appropriate level of designation.

(3) If a facility does not meet the requirements [~~comply with criteria~~], the department [~~office~~] must [~~shall~~] notify the facility of deficiencies and recommend corrective action.

(A) The facility must [~~shall~~] submit to the department [~~office~~] a report that outlines the corrective action [~~action(s)~~] taken. The department [~~office~~] may require a second survey to ensure compliance with the criteria. If the department [~~office~~] substantiates action that brings the facility into compliance with the criteria, the department [~~Office~~] recommends [~~shall recommend~~] designation to the commissioner.

(B) If a facility disagrees with the department's [~~office's~~] decision regarding its designation application or status, it may request a secondary review by a designation review committee. Membership on a designation review committee will:

(i) be voluntary;

(ii) be appointed by the EMS/Trauma Systems Section director [~~office director~~];

(iii) be representative of trauma care providers and appropriate levels of designated trauma facilities; and

(iv) include representation from the department and the Trauma Systems Committee of the Governor's EMS and Trauma Advisory Council (GETAC).

(C) If a designation review committee disagrees with the department's [~~office's~~] recommendation for corrective action, the records must [~~shall~~] be referred to the associate [~~assistant~~] commissioner for recommendation to the commissioner.

(D) If a facility disagrees with the department's [~~office's~~] recommendation at the end of the secondary review, the facility has a right to a hearing, governed by the department's rules for a contested case hearing and by Texas Administrative Procedure Act, Texas [~~in accordance with the department's rules for contested cases, and~~] Government Code[~~,~~] Chapter 2001, and the department's formal hearing procedures in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(p) The facility has [~~shall have~~] the right to withdraw its application at any time before [~~prior to~~] being recommended for trauma facility designation by the department [~~office~~].

(q) If the associate commissioner concurs with the recommendation to designate, the facility receives [~~shall receive~~] a letter and a certificate of designation valid for three [~~3~~] years. Additional actions, such as a site review or submission of information/reports to maintain designation, may be required by the department.

(r) It is [~~shall be~~] necessary to repeat the designation process as described in this section prior to expiration of a facility's designation or the designation expires.

(s) A designated trauma facility must [~~shall:~~]

[~~(1)~~] comply with the provisions of this chapter [~~within these sections~~]; all current state and system standards as described in this chapter; [~~and~~] all policies, protocols, and procedures as set forth in the system plan; and meet the following requirements.

(1) [~~(2)~~] Continue [~~continue~~] its commitment to provide the resources, personnel, equipment, and response as required by its designation level.[~~:~~]

(2) [~~(3)~~] Participate [~~participate~~] in the State Trauma [~~Texas EMS/Trauma~~] Registry. Data submission requirements for designation purposes are as follows.

(A) Initial designation--Six months of data prior to the initial designation survey must be uploaded. Subsequent to initial designation, data should be uploaded to the State Trauma [~~Texas EMS/Trauma~~] Registry on at least a quarterly basis (with monthly submissions recommended) as indicated in Chapter 103 of this title (relating to Injury Prevention and Control) [~~§103.19 of this title (relating to Electronic Reporting)~~].

(B) Re-designation--The facility's trauma registry should be current with at least quarterly uploads of data to the State Trauma [~~Texas EMS/Trauma~~] Registry (monthly submissions recommended) as indicated in Chapter 103 of this title. [~~§103.19 of this title;~~]

(3) [~~(4)~~] Notify [~~notify~~] the department [~~office~~], its RAC, and [~~plus~~] other affected RACs of all changes that affect air medical access to designated landing sites.

(A) Non-emergent changes must [~~shall~~] be implemented no earlier than 120 days after a written notification process.

(B) Emergency changes related to safety may be implemented immediately along with immediate notification to department, the RAC, and appropriate air medical providers [~~Air Medical Providers~~].

(C) Conflicts relating to helipad air medical access changes must [~~shall~~] be negotiated between the facility and the EMS provider.

(D) Any unresolved issues must [~~shall~~] be managed [~~handled~~] utilizing the nonbinding alternative dispute resolution (ADR) process of the RAC in which the helipad is located.[~~;~~]

(4) [~~(5)~~] Within five [~~within 5~~] days, notify the department [~~office~~]; its RAC and [~~plus~~] other affected RACs; and the health care [~~healthcare~~] facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in if temporarily unable to comply with a designation [~~criterion~~]. If the health care [~~healthcare~~] facility intends to meet [~~comply with~~] the requirements [~~criterion~~] and maintain current designation status, it must also submit to the department [~~office~~] a plan for corrective action and a request for a temporary exception to requirements [~~criteria~~] within five [~~5~~] days.

(A) If the requested essential requirements [~~criterion~~] exception is not critical to the operations of the health care [~~healthcare~~] facility's trauma program and the department [~~office~~] determines [~~that~~] the facility has intent to meet the requirements [~~comply~~], a 30-day to 90-day exception period from the onset date of the deficiency may be granted for the facility to meet requirements [~~achieve compliancy~~].

(B) If the requested essential requirements [~~criterion~~] exception is critical to the operations of the health care [~~healthcare~~] facility's trauma program and the department [~~office~~] determines [~~that~~] the facility has intent to meet requirements [~~comply~~], no greater than a 30-day exception period from the onset date of the deficiency may be granted for the facility to meet requirements [~~achieve compliancy~~]. Essential requirements [~~criteria~~] that are critical include [~~such things as~~]:

(i) neurological surgery capabilities (Level I, II);

(ii) orthopedic surgery capabilities (Level I, II, III);

(iii) general/trauma surgery capabilities (Level I, II, III);

(iv) anesthesiology (Levels I, II, III);

(v) emergency physicians (all levels);

(vi) trauma medical director (all levels);

(vii) trauma program manager [~~nurse coordinator/program manager~~] (all levels); and

(viii) trauma registry (all levels).

(C) If the health care [~~healthcare~~] facility has not met the requirements [~~come into compliance~~] at the end of the exception period, the department [~~office~~] may at its discretion elect one of the following.[~~:~~]

(i) Allow [~~allow~~] the facility to request designation at the level appropriate to its revised capabilities.[~~;~~]

(ii) Propose [~~propose~~] to re-designate the facility at the level appropriate to its revised capabilities.[~~;~~]

(iii) Propose [~~propose~~] to suspend the facility's designation status. If the facility is amenable to this action, the department [~~office~~] will develop a [~~plan for~~] corrective action plan for the facility and a specific timeline for [~~compliance by~~] the facility to meet the requirements.[~~; or~~]

(iv) Propose [~~propose~~] to extend the facility's temporary exception to criteria for an additional period not to exceed 90 days. The department will develop a [~~plan for~~] corrective action plan for the facility and a specific timeline for [~~compliance by~~] the facility to meet the requirements.

(I) Suspensions of a facility's designation status and exceptions to criteria for facilities are [~~will be~~] documented on the EMS Trauma Systems Section [~~office~~] website.

(II) If the facility disagrees with a proposal by the department [~~office,~~] or is unable or unwilling to meet the department-imposed [~~office-imposed~~] timelines for completion of specific actions plans, it may request a secondary review by a designation review committee as defined in subsection (o)(3)(B) of this section.

(III) The department [~~office~~] may at its discretion choose to activate a designation review committee at any time to solicit technical advice regarding criteria deficiencies.

(IV) If the designation review committee disagrees with the department's [~~office's~~] recommendation for corrective actions, the case is [~~shall be~~] referred to the associate [~~assistant~~] commissioner for recommendation to the commissioner.

(V) If a facility disagrees with the department's [~~office's~~] recommendation at the end of the secondary review process, the facility has a right to a hearing, governed by the department's rules for a contested case hearing and by Texas Administrative Procedure Act, Texas [~~in accordance with the department's rules for contested cases and~~] Government Code[~~,~~] Chapter 2001, and the department's formal hearing procedures in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(VI) Designated trauma facilities seeking exceptions to essential criteria [~~shall~~] have the right to withdraw the request at any time prior to resolution of the final appeal process.[~~;~~]

(5) [~~(6)~~] Notify [~~notify~~] the department [~~office~~]; its RAC and [~~plus~~] other affected RACs; and the health care [~~healthcare~~] facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in if [~~transfers-in, if~~] it no longer provides trauma services commensurate with its designation level.

(A) If the facility chooses to apply for a lower level of trauma designation, it may do so at any time; however, it is [~~shall be~~] necessary to repeat the designation process. There must [~~shall~~] be a

[~~paper~~] review by the department [~~office~~] to determine if [~~and when~~] a full survey is [~~shall be~~] required.

(B) If the facility chooses to relinquish its trauma designation, it must [~~shall~~] provide at least 30 days' [~~days~~] notice to the RAC and the department. [~~office; and~~]

(6) [~~(7)~~] Within [~~within~~] 30 days, notify the department [~~office~~]; its RAC and [~~plus~~] other affected RACs; and the health care [~~healthcare~~] facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in, of the change [~~change(s)~~] if it adds capabilities beyond those that define its existing trauma designation level.

(A) It is [~~shall be~~] necessary to repeat the trauma designation process.

(B) There must [~~shall then~~] be a [~~paper~~] review by the department [~~office~~] to determine if [~~and when~~] a full survey is [~~shall be~~] required.

(t) Any facility seeking trauma designation must [~~shall~~] have measures in place that define the trauma patient population evaluated at the facility or [~~and/or~~] at each of its locations, and the ability to track trauma patients throughout the course of [~~their~~] care within the facility or [~~and/or~~] at each of its locations in order to maximize funding opportunities for uncompensated care.

(u) A health care [~~healthcare~~] facility may not use the terms "trauma facility," [~~facility",~~] "trauma hospital," [~~hospital",~~] "trauma center," [~~center",~~] or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the health care [~~healthcare~~] facility is currently designated as a trauma facility according to the process described in this section.

(v) The department [~~office~~] has [~~shall have~~] the right to review, inspect, evaluate, and audit all trauma patient records, trauma performance improvement committee minutes, and other documents relevant to trauma care in any designated trauma facility or applicant [~~applicant/healthcare~~] facility at any time to verify meeting requirements in [~~compliance with~~] the statute and this section, [~~rule,~~] including the designation requirements [~~criteria~~]. The department maintains [~~office shall maintain~~] confidentiality of such records to the extent authorized by the Texas Public Information Act, Texas Government Code[,] Chapter 552, and consistent with current laws and regulations related to the Health Insurance Portability and Accountability Act of 1996. Such inspections must [~~shall~~] be scheduled by the department [~~office~~] when deemed appropriate. The department provides [~~office shall provides~~] a copy of the survey report, for surveys conducted by or contracted for the department, and the results to the health care [~~healthcare~~] facility.

(w) The department [~~office~~] may grant an exception to this section if it finds [~~that~~] meeting requirements in [~~compliance with~~] this section would not be in the best interests of the persons served in the affected local system.

(x) Advanced (Level III) Trauma Facility Requirements [~~Criteria~~]. An advanced trauma facility (Level III) provides resuscitation, stabilization, and assessment of injured patients and either provides treatment or arranges for appropriate transfer to a higher level designated trauma facility.
[~~Figure: 25 TAC §157.125(x)~~]

(1) The facility must identify a trauma medical director (TMD) responsible for the provision of trauma care and must have a defined job description and organizational chart delineating the TMD's role and responsibilities. The TMD must be a physician who meets the following:

(A) is a general surgeon;

(B) is currently credentialed in ATLS or an equivalent department-approved course;

(C) is charged with overall management of trauma services provided by the facility;

(D) must have the authority and responsibility for the clinical oversight of the trauma program, including:

(i) credentialing of medical staff who provide trauma care;

(ii) recommending trauma team privileges;

(iii) providing trauma care;

(iv) developing trauma management guidelines;

(v) collaborating with nursing to address educational needs; and

(vi) developing, implementing, and maintaining the trauma performance improvement and patient safety (PIPS) plan with the trauma program manager (TPM);

(E) must be credentialed by the facility to participate in the resuscitation and treatment of trauma patients and must:

(i) have current board-certification or board-eligibility;

(ii) complete nine hours of trauma-related continuing medical education per year;

(iii) comply with trauma management guidelines; and

(iv) participate in the trauma PIPS program;

(F) must participate in a leadership role in the facility, community, and emergency management (disaster) response committee; and

(G) should participate in the development of the regional trauma system plan.

(2) An identified TPM is a registered nurse and must:

(A) successfully complete and remain current in the TNCC or ATCN or an equivalent department-approved course;

(B) successfully complete and remain current in a nationally recognized pediatric advanced life support course (e.g., PALS or ENPC);

(C) have the authority and responsibility to monitor trauma patient care from emergency department (ED) admission through operative intervention, intensive care unit (ICU) care, stabilization, rehabilitation care, and discharge, including the trauma PIPS program;

(D) have a defined job description and organizational chart delineating the TPM's role and responsibilities;

(E) participate in a leadership role in the facility, community, and regional emergency management (disaster) response committee;

(F) be full-time; and

(G) complete a course designed for their role that provides essential information on the structure, process, organization, and administrative responsibilities of a PIPS program to include a

department-approved trauma outcomes and performance improvement course.

(3) The trauma program must have written trauma management guidelines, developed with approval by the trauma multidisciplinary committee and facility's medical staff with evidence of implementation, for:

(A) trauma team activation;

(B) trauma resuscitation guidelines for the roles and responsibilities of team members during a resuscitation;

(C) triage, admission, and transfer of trauma patients; and

(D) trauma management guidelines specific to the trauma population evaluated and admitted to the facility as defined by the State Trauma Registry.

(4) All major, severe, and critical trauma patients must be admitted to an appropriate surgeon and all multi-system trauma patients must be admitted to a general surgeon.

(5) A general surgeon participating in trauma-call coverage must:

(A) be credentialed in ATLS or an equivalent department-approved course at least one time if board-certification maintained; and

(B) be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients and must maintain:

(i) current board-certification or board-eligibility, or must maintain current ATLS or an equivalent department-approved course;

(ii) nine hours of trauma-related continuing medical education per year;

(iii) compliance with trauma management guidelines;

(iv) participation in the trauma PIPS program; and

(v) attendance at 50 percent or more of multidisciplinary and peer review trauma committee meetings.

(6) A non-board-certified general surgeon desiring inclusion in a facility's trauma program must meet the ACS guidelines as specified in its most current version of the "Resources for Optimal Care of the Injured Patient," Alternate Criteria section.

(7) The general surgeon must be present in the ED at the time of arrival of the highest level of trauma activation or within 30 minutes of notification of the trauma activation. This must be continuously monitored by the trauma PIPS program.

(8) In facilities with surgical residency programs, evaluation and treatment may be started by a team of surgeons that must include a post-graduate year four (PGY4) or more senior surgical resident who is a member of that facility's residency program. The attending surgeon must participate in major therapeutic decisions, be present in the emergency department for major resuscitations, be present in the emergency department for the highest and secondary trauma activations, and be present at operative procedures. These must be continuously monitored by the trauma PIPS program.

(9) When the attending surgeon is not activated initially and an urgent surgical consult is necessary, the maximum response time of the attending surgeon is 60 minutes from notification to physical presence at the patient's bedside. This must be continuously monitored by the trauma PIPS program.

(10) There must be a published on-call schedule for obtaining general surgery care. There must be a documented system for obtaining general surgical care for situations when the attending general surgeon on-call is not available. This must be continuously monitored by the trauma PIPS program.

(11) An orthopedic surgeon participating in trauma-call coverage must be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients and must maintain:

(A) current board-certification, board-eligibility, or meet ACS standards as specified in its current addition of "Resources for Optimal Care of the Injured Patient," Alternate Criteria section;

(B) compliance with trauma management guidelines; and

(C) participation in the trauma PIPS program.

(12) An orthopedic surgeon providing trauma coverage must be promptly available (physically present) at the major, severe, or critical trauma patient's bedside within 30 minutes of request by the attending trauma surgeon or emergency physician, from inside or outside the facility. This must be continuously monitored by the trauma PIPS program.

(13) When the orthopedic surgeon is not activated initially and an urgent surgical consult is necessary, the maximum response time of the orthopedic surgeon is 60 minutes from notification to physical presence at the patient's bedside. This must be continuously monitored by the trauma PIPS program.

(14) There must be a published on-call schedule for obtaining orthopedic surgery care. There must be a documented system for obtaining orthopedic surgery care for situations when the attending orthopedic surgeon on-call is not available. This must be continuously monitored by the trauma PIPS program.

(15) The orthopedic surgeon representative to the multidisciplinary trauma committee maintains nine hours of trauma-related continuing medical education per year and attends 50 percent or more of multidisciplinary and peer review trauma committee meetings.

(16) When a Level III facility has either full-time, routine, or limited neurosurgical coverage, a neurosurgeon participating in trauma-call coverage must be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients and must maintain:

(A) current board-certification, board-eligibility, or meet ACS standards as specified in its current addition of "Resources for Optimal Care of the Injured Patient," Alternate Criteria section;

(B) compliance with trauma management guidelines; and

(C) participation in the trauma PIPS program.

(17) A neurosurgeon providing trauma coverage must be promptly available (physically present) at the major, severe, or critical trauma patient's bedside within 30 minutes of an emergency request by the attending trauma surgeon or emergency physician, from inside or outside the facility. This must be continuously monitored by the trauma PIPS program.

(18) When the neurosurgeon is not notified of the initial activation or was not consulted by the evaluating team and it has been determined by the emergency physician or trauma surgeon that an urgent neurosurgical consult is necessary, the maximum response time of the neurosurgeon surgeon is 60 minutes from notification to physical

presence at the patient's bedside. This must be continuously monitored by the trauma PIPS program.

(19) There must be a published on-call schedule for obtaining neurosurgical care.

(20) There must be a documented system for obtaining neurosurgical care for situations when the neurosurgeon on-call is not available. This must be continuously monitored by the trauma PIPS program.

(21) The neurosurgeon representative to the multidisciplinary trauma committee must have nine hours of trauma-related continuing medical education per year and attend 50 percent or more of multidisciplinary and peer review trauma committee meetings.

(22) An emergency physician must be available in the emergency department 24-hours a day and physicians providing trauma coverage must meet the following:

(A) be credentialed by the facility to provide emergency medical services; and

(B) be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients of all ages and must maintain:

(i) current board-certification, board-eligibility, or maintain current ATLS or an equivalent department-approved course;

(ii) compliance with trauma management guidelines; and

(iii) participation in the trauma PIPS program.

(23) A board-certified emergency medicine physician providing trauma coverage must have successfully completed an ATLS Student Course or an equivalent department-approved ATLS course at least once.

(24) Current ATLS verification is required for all physicians who work in the emergency department and are not board-certified in Emergency Medicine.

(25) The emergency physician representative to the multidisciplinary trauma committee must have nine hours of trauma-related continuing medical education per year and attend 50 percent or more of multidisciplinary and peer review trauma committee meetings.

(26) The radiology physician on-call must respond within 30 minutes of request, from inside or outside the facility. This system must be continuously monitored by the trauma PIPS program.

(27) The anesthesiology physician on-call must respond within 30 minutes of request, from inside or outside the facility. This system must be continuously monitored by the trauma PIPS program.

(A) Requirements may be fulfilled by a member of the anesthesia care team credentialed by the TMD to participate in the resuscitation and treatment of trauma patients that may include:

(i) current board certification or board eligibility;

(ii) trauma continuing education;

(iii) compliance with trauma management guidelines; and

(iv) participation in the trauma PIPS program.

(B) The anesthesiology physician representative to the multidisciplinary trauma committee that provides trauma coverage to the facility must attend 50 percent or more of multidisciplinary and peer review trauma committee meetings.

(28) All nurses caring for trauma patients throughout the continuum of care have ongoing documented knowledge and skill in trauma nursing for patients of all ages to include trauma specific orientation, annual clinical competencies, and continuing education.

(29) Written guidelines for nursing care of trauma patients for all units (e.g.,ED, ICU, Operating Room (OR), Post Anesthesia Care Unit (PACU), Medical/Surgical Units) in the facility must be implemented.

(30) The facility must have a written plan, developed by the facility, for acquisition of additional staff on a 24-hour basis to support units with increased patient acuity, and multiple emergency procedures and admissions (i.e., a written disaster plan.)

(31) The facility must have emergency services available 24-hours a day.

(A) The ED must have a designated physician director.

(B) The ED must have physicians with special competence in the care of critically injured patients, designated as members of the trauma team, and physically present in the ED 24-hours per day. Neither a facility's telemedical capabilities nor the physical presence of advanced practice providers (APPs) satisfies this requirement.

(C) APPs and telemedicine-support physicians who participate in the care of major, severe, or critical trauma patients must be credentialed by the facility to participate in the resuscitation and treatment of trauma patients and must maintain:

(i) board-certification or board-eligibility in specialty, or current ATLS or an equivalent department-approved ATLS course;

(ii) nine hours of trauma-related continuing medical education per year;

(iii) compliance with trauma management guidelines; and

(iv) participation in the trauma PIPS program.

(D) The ED physician must be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle for the highest level of trauma activation and must respond within 30 minutes from notification of the trauma activation. This must be monitored in the trauma PIPS program.

(E) A minimum of two registered nurses who have trauma nursing training must participate in the highest level trauma activations.

(F) All registered nursing staff responding to the highest levels of trauma activations must have successfully completed and hold current credentials in an advanced cardiac life support course (e.g., Advanced Cardiac Life Support (ACLS) or an equivalent department-approved course), a nationally recognized pediatric advanced life support course (e.g., PALS or ENPC), and TNCC or ATCN or an equivalent department-approved course. A free-standing children's facility is exempt from the ACLS requirement.

(G) Nursing documentation for trauma activation patients must be systematic and meet the trauma primary and secondary assessment guidelines.

(H) 100 percent of nursing staff must have successfully completed and hold current credentials in an advanced cardiac life support course (e.g., ACLS or an equivalent department-approved course), a nationally recognized pediatric advanced life support course (e.g.,

PALS or ENPC), and TNCC or ATCN or an equivalent department-approved course, within 18 months of date of employment in the ED.

(I) 100 percent of a free-standing children's facility nursing staff who care for trauma patients must have successfully completed and hold current credentials in a nationally recognized pediatric advanced life support course (e.g., PALS or ENPC) and TNCC or ATCN or an equivalent department-approved course, within 18 months of date of employment in the ED.

(J) Two-way communication with all pre-hospital emergency medical services vehicles must be available.

(K) Equipment and services for the evaluation and resuscitation of, and to provide life support for, critically or seriously injured patients of all ages must include:

(i) airway control and ventilation equipment including laryngoscope and endotracheal tubes of all sizes, bag-valve-mask devices (BVMs), pocket masks, advanced airway management devices, and oxygen;

(ii) mechanical ventilator;

(iii) pulse oximetry and capnography;

(iv) suction device;

(v) electrocardiograph, oscilloscope, and defibrillator;

(vi) internal age-specific paddles;

(vii) all standard intravenous fluids and administration devices, including large-bore intravenous catheters and a rapid infuser system;

(viii) sterile surgical sets for procedures standard for the emergency department such as thoracostomy, venous cutdown, central line insertion, thoracotomy, diagnostic peritoneal lavage (if performed at facility), airway control/cricothyrotomy, etc.;

(ix) drugs and supplies necessary for emergency care;

(x) cervical spine stabilization device;

(xi) length-based body weight and tracheal tube size evaluation system (e.g., a current Broselow tape) and resuscitation medications and equipment that are dose-appropriate for all ages;

(xii) long bone stabilization device;

(xiii) pelvic stabilization device;

(xiv) thermal control equipment for patients and a rapid warming device for blood and fluids; and

(xv) non-invasive continuous blood pressure monitoring devices.

(32) Imaging capability must be available, with an in-house technician 24-hours a day or on-call and responding within 30 minutes of request. This must be continuously monitored by the trauma PIPS program.

(33) Psychosocial support services must be available for staff, patients, and their families.

(34) Operating room services must be available 24-hours a day.

(A) With advanced notice, the operating room must be opened and ready to accept a patient within 30 minutes. This must be continuously monitored by the trauma PIPS program.

(B) Equipment for all trauma patient populations and anticipated special requirements must include:

(i) thermal control equipment for patient and for blood and fluids;

(ii) imaging capability including c-arm image intensifier with technologist available 24-hours a day;

(iii) endoscopes, all varieties, and bronchoscope;

(iv) equipment for long bone and pelvic fixation;

(v) rapid infuser system;

(vi) appropriate monitoring and resuscitation equipment;

(vii) capability to measure pulmonary capillary wedge pressure; and

(viii) capability to measure invasive systemic arterial pressure.

(35) A PACU or surgical ICU must be available for trauma patients following operative interventions and include the following.

(A) Registered nurses and other essential personnel 24-hours a day.

(B) Appropriate monitoring and resuscitation equipment.

(C) Pulse oximetry and capnography.

(D) Thermal control equipment for patients and a rapid warming device for blood and fluids.

(36) An ICU must be available for trauma patients 24-hours a day and include the following.

(A) Designated surgical director or surgical co-director responsible for setting policies and administration related to trauma ICU patients. A physician providing this coverage must be a surgeon credentialed by the TMD to participate in the resuscitation and treatment of trauma patients and must maintain:

(i) board-certification, board-eligibility, or current in ATLS or an equivalent department-approved course;

(ii) trauma continuing medical education;

(iii) compliance with trauma management guidelines; and

(iv) participation in the trauma PIPS program.

(B) Physician, credentialed in critical care by the TMD, on duty in ICU 24-hours a day or immediately available from in-facility. Arrangements for 24-hour surgical coverage of all trauma patients must be provided for emergencies and routine care. This must be continuously monitored by the trauma PIPS program.

(C) Registered nurse-patient minimum ratio of 1:2 on each shift for patients identified as critical acuity.

(D) Appropriate monitoring and resuscitation equipment.

(E) Pulse oximetry and capnography.

(F) Thermal control equipment for patients and a rapid warming device for blood and fluids.

(G) Capability to measure pulmonary capillary wedge pressure.

(H) Capability to measure invasive systemic arterial pressure.

(37) Respiratory services in-house and must be available 24-hours per day.

(38) Clinical laboratory services must be available 24-hours per day and provide the following.

(A) Standard analyses of blood, urine, and other body fluids, including microsampling.

(B) Blood typing and cross-matching, to include massive transfusion guidelines and emergency release of blood guidelines.

(C) Comprehensive blood bank or access to a community central blood bank and adequate facility storage.

(D) Coagulation studies.

(E) Blood gases and pH determinations.

(F) Microbiology.

(G) Drug and alcohol screening.

(H) Infectious disease standard operating procedures.

(I) Serum and urine osmolality.

(39) Special imaging capabilities must be available.

(A) Sonography is available 24-hours per day or on-call and if notified, responds within 30 minutes of notification.

(B) Computerized tomography (CT) is available on-call 24-hours per day and if notified, responds within 30 minutes. This must be continuously monitored by the trauma PIPS program.

(C) Angiography of all types is available 24-hours per day and if on-call, responds within 30 minutes.

(D) Nuclear scanning is available and responds as defined in the trauma management guidelines.

(40) Acute hemodialysis capability is available or transfer agreements are documented if not available.

(41) Established criteria for care of burn patients with a process to expedite the transfer of burn patients to a burn center or higher level of care.

(42) In circumstances where a designated spinal cord injury rehabilitation center exists in the region, early transfer should be considered and transfer agreements in effect.

(43) In circumstances where a moderate to severe head injury center exists in the region, transfer should be considered in selected patients and transfer agreements in effect.

(44) Physician-directed rehabilitation service, staffed by personnel trained in rehabilitation care and properly equipped for care of the injured patient, or transfer guidelines to a rehabilitation facility for patients needing a higher level of care or specialty services, including:

(A) physical therapy;

(B) occupational therapy; and

(C) speech therapy.

(45) Social services must be available to assist with management of trauma patients.

(46) The facility must have a defined trauma PIPS plan approved by the TMD, TPM, and the multidisciplinary committee.

(A) On initial designation, a facility must have completed at least six months of reviews on all qualifying trauma records with evidence of "loop closure" on identified variances. Compliance with internal trauma management guidelines must be evident.

(B) On re-designation, a facility must show continuous PIPS activities throughout its designation and a rolling current three-year period must be available for review at all times.

(C) Minimum PIPS inclusion criteria must include: all trauma team activations (including those discharged from the ED); all trauma deaths; all identified facility events; transfers-in and transfers-out; and readmissions within 48 hours after discharge.

(D) The trauma PIPS program must be organized and include a pediatric-specific component with trauma audit filters.

(i) Review of trauma medical records for appropriateness and quality of care.

(ii) Documented evidence of identification of all variances from trauma management guidelines and system response guidelines, with in-depth critical review.

(iii) Documented evidence of corrective actions implemented to address all identified variances with tracking of data analysis.

(iv) Documented evidence of secondary level of review and participation by the TMD.

(v) Morbidity and mortality review including decisions by the TMD as to whether the trauma management guidelines were followed.

(vi) Documented resolutions "loop closure" of all identified variance to prevent future recurrences.

(vii) Specific reviews of all trauma deaths and other specified cases, including complications, utilizing age-specific criteria.

(viii) Multidisciplinary hospital trauma PIPS committee structure in place.

(E) Multidisciplinary trauma committee meetings for PIPS activities must include department communication, data review, and measures for problem solving.

(F) Multidisciplinary trauma conferences must include all disciplines caring for trauma patients. This conference must be for the purpose of addressing PIPS activities and continuing education.

(G) Feedback regarding trauma patient transfers-in must be provided to all transferring facilities.

(H) Feedback regarding trauma patient transfers-out must be obtained from receiving facilities.

(I) The trauma program must maintain a trauma registry or utilize the State Trauma Registry for data entry of NTDB registry inclusion criteria patients. Trauma registry data must be submitted to the State Trauma Registry on at least a quarterly basis.

(J) The trauma program must participate in the RAC's performance improvement (PI) program, including adherence to regional guidelines, submitting data preapproved by the RAC membership such as summaries of transfer delays and transfers to facilities outside of the RAC.

(K) The trauma program must track the times and reasons for diversion must be documented and reviewed by the trauma PIPS program and multidisciplinary committee.

(L) The trauma program must maintain published on-call schedules must be maintained for general surgeons, orthopedic surgeons, neurosurgeons, anesthesia, radiology, and other major specialists, if available.

(M) The trauma program must have performance improvement personnel dedicated to and specific for the trauma program.

(47) The trauma program must participate in the regional trauma system per RAC requirements.

(48) The trauma program must have a process to expedite the transfer of major, severe, or critical trauma patients to include written management guidelines, written transfer agreements, and participation in a regional trauma system transfer plan for patients needing higher level of care or specialty services.

(49) The facility must have a system for establishing an appropriate landing zone near the facility (if rotor-wing services are available).

(50) The trauma program must provide education and consultations to physicians of the community and outlying areas.

(51) The trauma program must have an identified individual to coordinate the facility's community outreach programs for the public and professionals.

(52) The trauma program must have a public education program to address specific injuries identified by the facility's trauma registry. Documented participation in a RAC injury prevention program is acceptable.

(53) The trauma program must have formal programs in trauma continuing education provided by facility for staff or in collaboration with the RAC, based on needs identified from the trauma PIPS program for:

(A) staff physicians;

(B) nurses;

(C) allied health personnel, including advanced practice providers;

(D) community physicians; and

(E) pre-hospital personnel.

(54) The facility may participate in trauma-related research.

~~[(1) Advanced (Level III) Trauma Facility Criteria Standards.]~~
~~[Figure: 25 TAC §157.125(x)(1)]~~

~~[(2) Advanced (Level III) Trauma Facility Criteria Audit Filters.]~~
~~[Figure: 25 TAC §157.125(x)(2)]~~

(y) Basic (Level IV) Trauma Facility Requirements [~~Criteria~~]. A Basic Trauma Facility (Level IV) provides resuscitation, stabilization, and arranges for appropriate transfer of trauma patients requiring a higher level of definitive care.
[~~Figure: 25 TAC §157.125(y)~~]

(1) The facility must identify a TMD responsible for the provision of trauma care and must have a defined job description and organizational chart delineating the TMD's role and responsibilities. The TMD must be a physician who meets the following:

(A) is currently credentialed in ATLS or an equivalent department-approved course;

(B) is charged with overall management of trauma services provided by the facility;

(C) must have the authority and responsibility for the clinical oversight of the trauma program, including:

(i) credentialing of medical staff who provide trauma care;

(ii) providing trauma care;

(iii) developing trauma management guidelines;

(iv) collaborating with nursing to address educational needs; and

(v) developing and implementing the trauma PIPS plan with the TPM;

(D) must be credentialed by the facility to participate in the resuscitation and treatment of trauma patients and must:

(i) have current board-certification or board-eligibility in surgery, emergency medicine or family medicine, or must maintain current ATLS or an equivalent department-approved course;

(ii) complete nine hours of trauma-related continuing medical education per year;

(iii) comply with trauma management guidelines; and

(iv) participate in the trauma PIPS program;

(E) must participate in a leadership role in the facility, community, and emergency management (disaster) response committee; and

(F) should participate in the development of the regional trauma system plan.

(2) An identified TPM is a registered nurse and must:

(A) successfully complete and remain current in the TNCC or ATCN or an equivalent department-approved course;

(B) successfully complete and remain current in a nationally recognized pediatric advanced life support course (e.g., PALS or the ENPC);

(C) have the authority and responsibility to monitor trauma patient care from ED admission through operative intervention, ICU care, stabilization, rehabilitation care, and discharge, including the trauma PIPS program;

(D) have a defined job description and organizational chart delineating the TPM's role and responsibilities;

(E) participate in a leadership role in the facility, community, and regional emergency management (disaster) response committee;

(F) ensure the TPM hours dedicated to the trauma program maintains a concurrent PIPS process and trauma registry; and

(G) complete a course designed for their role that provides essential information on the structure, process, organization, and administrative responsibilities of a PIPS program to include a department-approved trauma outcomes and performance improvement course.

(3) An identified Trauma Registrar or TPM must have appropriate training (e.g., the Association for the Advancement of Automotive Medicine (AAAM) course) in injury severity scaling. Typi-

cally, one full-time equivalent (FTE) employee dedicated to the registry is required to process approximately 500 patients annually.

(4) Written trauma management guidelines must be developed with approval by the TMD, TPM, and the facility's medical staff with evidence of implementation, for:

(A) trauma team activation, including defined response times;

(B) trauma resuscitation, defining the roles and responsibilities of team members during a resuscitation;

(C) triage, admission, and transfer of trauma patients; and

(D) trauma management specific to the trauma population evaluated and admitted to the facility as defined by the trauma registry.

(5) The emergency department must have physician coverage 24-hours per day. The physician providing coverage in the ED must be credentialed by the facility to provide emergency medical services.

(A) A physician providing trauma coverage must be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients of all ages and must maintain:

(i) current board-certification or board-eligibility in emergency medicine or family medicine, or current ATLS or an equivalent department-approved course;

(ii) nine hours of trauma-related continuing medical education per year;

(iii) compliance with trauma management guidelines; and

(iv) participation in the trauma PIPS program.

(B) A board-certified emergency medicine physician providing trauma coverage must have successfully completed an ATLS Student Course or an equivalent department-approved ATLS course, at least once.

(C) Current ATLS verification is required for all physicians who work in the ED and are not board-certified in emergency medicine.

(D) The emergency physician representative to the multidisciplinary committee that provides trauma coverage to the facility must attend 50 percent or more of multidisciplinary and peer review trauma committee meetings.

(6) Radiology physician services must be available.

(7) Anesthesiology may be fulfilled by a member of the anesthesia care team credentialed in assessing emergent situations in trauma patients and providing any indicated treatment if operative services are provided.

(8) All nurses caring for trauma patients throughout the continuum of care must have ongoing documented knowledge and skill in trauma nursing for patients of all ages to include trauma specific orientation, annual clinical competencies, and continuing education.

(9) Written guidelines for nursing care of trauma patients for all units (i.e., ED, ICU, OR, PACU, medical/surgical units) in the facility must be implemented.

(10) The facility must have a written plan, developed by the facility, for acquisition of additional staff on a 24-hour basis to support units with increased patient acuity, multiple emergency procedures, and admissions (i.e., written disaster plan.)

(11) The facility must have emergency services available 24-hours a day.

(A) Physician on-call schedule must be published.

(B) Physicians with special competence in the care of critically injured patients, designated as members of the trauma team and on-call (if not in-house 24/7) must be promptly available within 30 minutes of request from inside or outside the facility. Neither a facility's telemedicine medical service capabilities nor the physical presence of APPs satisfy this requirement with the exception of the following:

(i) A health care facility located in a county with a population of less than 30,000 may satisfy a Level IV trauma facility designation requirement relating to physicians through the use of telemedicine medical service in which an on-call physician who has special competence in the care of critically injured patients provides patient assessment, diagnosis, consultation, or treatment, or transfers medical data to a physician, advanced practice registered nurse, or physician assistants located at the facility; and

(ii) APPs and telemedicine-support physicians who participate in the care of major, severe, or critical trauma patients must be credentialed by the facility to participate in the resuscitation and treatment of trauma patients, to include requirements such as current board-certification or board-eligibility in surgery or emergency medicine, nine hours of trauma-related continuing medical education per year, compliance with trauma management guidelines, and participation in the trauma PIPS program.

(C) The ED physician must be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle for the highest level of trauma activation and must respond within 30 minutes from notification. This must be continuously monitored in the trauma PIPS program.

(D) A minimum of one and preferably two registered nurses who have trauma nursing training must participate in initial resuscitation of the highest level of trauma activations.

(E) All registered nursing staff responding to the highest levels of trauma activations must have successfully completed and hold current credentials in an advanced cardiac life support course (e.g., ACLS or an equivalent department-approved course), a nationally recognized pediatric advanced life support course (e.g., PALS or ENPC), and TNCC or ATCN or an equivalent department-approved course.

(F) 100 percent of nursing staff must have successfully completed and hold current credentials in an advanced cardiac life support course (e.g., ACLS or an equivalent department-approved course), a nationally recognized pediatric advanced life support course (e.g., PALS or ENPC), and TNCC or ATCN or an equivalent department-approved course, within 18 months of date of employment in the ED.

(G) Nursing documentation for trauma activation patients must be systematic and meet the trauma primary and secondary assessment guidelines.

(H) Two-way communication with all pre-hospital emergency medical services vehicles must be available.

(I) Equipment and services for the evaluation and resuscitation of, and to provide life support for, critically or seriously injured patients of all ages must include:

(i) airway control and ventilation equipment including laryngoscope and endotracheal tubes of all sizes, BVMs, pocket masks, advanced airway management devices, and oxygen;

(ii) mechanical ventilator;

(iii) pulse oximetry and capnography;

(iv) suction device;

(v) electrocardiograph, oscilloscope, and defibrillator;

(vi) all standard intravenous fluids and administration devices, including large-bore intravenous catheters and a rapid infuser system;

(vii) sterile surgical sets for procedures standard for the ED such as thoracostomy, central line insertion, thoracotomy if surgeons participate in trauma care, airway control/cricothyrotomy, etc.;

(viii) drugs and supplies necessary for emergency care;

(ix) cervical spine stabilization device;

(x) length-based body weight & tracheal tube size evaluation system (e.g., a current Broselow tape) and resuscitation medications and equipment that are dose-appropriate for all ages;

(xi) long bone stabilization device;

(xii) pelvic stabilization device;

(xiii) thermal control equipment for patients and a rapid warming device for blood and fluids; and

(xiv) non-invasive continuous blood pressure monitoring devices.

(12) Clinical laboratory services must be available 24-hours per day and provide the following.

(A) Call-back process for trauma activations available within 30 minutes. This must be continuously monitored in the trauma PIPS program.

(B) Standard analyses of blood, urine, and other body fluids, including microsampling.

(C) Blood-typing and cross-matching with a minimum of two units of universal packed red blood cells (PRBCs) immediately available.

(D) Capability for immediate release of blood for a transfusion and measures to obtain additional blood supply.

(E) Coagulation studies.

(F) Blood gases and pH determinations.

(G) Drug and alcohol screening.

(13) Imaging capabilities must be available 24-hours per day. Call-back process for trauma activations must be available within 30 minutes. This must be continuously monitored in the trauma PIPS program.

(14) The trauma program must have a defined trauma PIPS plan approved by the TMD, TPM, and the trauma multidisciplinary committee.

(A) On initial designation, a facility must have completed at least six months of reviews on all qualifying trauma records with evidence of "loop closure" on identified variances. Compliance with internal trauma management guidelines must be evident.

(B) On re-designation, a facility must show continuous PIPS activities throughout its designation and a rolling current three-year period must be available for review at all times.

(C) Minimum PIPS inclusion criteria includes: all trauma team activations (including those discharged from the ED); all trauma deaths; all identified facility events; transfers-in and transfers-out; and readmissions within 48-hours after discharge.

(D) The trauma PIPS program must be organized and include a pediatric-specific component with trauma audit filters.

(i) Review of trauma medical records for appropriateness and quality of care.

(ii) Documented evidence of identification of all variances from trauma management guidelines and system response guidelines, with in-depth critical review.

(iii) Documentation of corrective actions implemented to address all identified variances with tracking of data analysis.

(iv) Documented evidence of secondary level of review and participation by the TMD.

(v) Morbidity and mortality review including decisions by the TMD as to whether the trauma management guidelines were followed.

(vi) Documented resolutions "loop closure" of all identified issues to prevent future recurrences.

(vii) Specific reviews of all trauma deaths and other specified cases, including complications, utilizing age-specific criteria.

(viii) Multidisciplinary facility trauma PIPS committee structure must be in place and include department communication, data review, and measures for problem solving.

(E) Feedback regarding trauma patient transfers-out must be obtained from receiving facilities.

(F) Facility must maintain a trauma registry or utilize the State Trauma Registry for data entry of patients meeting NTDB registry inclusion criteria. Trauma registry data must be submitted to the State Trauma Registry on at least a quarterly basis.

(G) Participation with the RAC's PI program, including adherence to regional guidelines, submitting data preapproved by the membership to the RAC such as summaries of transfer delays and transfers to facilities outside of the RAC.

(H) Times and reasons for diversion must be documented and reviewed by the trauma PIPS program and multidisciplinary committee.

(15) The trauma program must participate in the regional trauma system per RAC requirements.

(16) The trauma program must have processes in place to expedite the transfer of major, severe, or critical trauma patients to include written management guidelines, written transfer agreements, and participation in a regional trauma system transfer plan for patients needing higher level of care or specialty services.

(17) The facility must have a system in place for establishing an appropriate landing zone in close proximity to the facility (if rotor-wing services are available).

(18) Facility may participate in a RAC injury prevention program.

(19) Formal programs in trauma continuing education must be provided by the facility or coordinated through the RAC for staff, based on needs identified from the trauma PIPS program for:

(A) staff physicians;

(B) nurses; and

(C) allied health personnel, including APPs.

~~[(1) Basic (Level IV) Trauma Facility Criteria Standards.]~~ ~~[Figure: 25 TAC §157.125(y)(1)]~~

~~[(2) Basic (Level IV) Trauma Facility Criteria Audit Filters.]~~
~~[Figure: 25 TAC §157.125(y)(2)]~~

§157.126. Trauma Facility Designation Requirements Effective on September 1, 2025.

(a) The department designates hospital applicants as trauma facilities, which are part of the trauma and emergency health care system. Hospitals must meet the designation requirements specific to the level of designation requested by September 1, 2025. Trauma designation surveys conducted on or after September 1, 2025, are evaluated on the requirements in this section.

(b) The facility seeking trauma designation submits a completed designation application packet to the department. The department reviews the facility application documents for the appropriate level of designation. The complete designation application packet must include the following:

(1) a trauma designation application for the requested level of trauma designation;

(2) a completed department designation assessment questionnaire;

(3) the documented trauma designation survey summary report that includes findings of requirements met and medical record reviews;

(4) evidence of documented data validation and quarterly submission to the State Trauma Registry and National Trauma Data Bank (NTDB) (if applicable) for the past 12 months;

(5) evidence of the facility's trauma program participation at Regional Advisory Council (RAC) meetings throughout the designation cycle; and

(6) full payment of the non-refundable, non-transferrable designation fee.

(c) The department reviews the designation application packet to determine and approve the facility's level of trauma designation. The department defines the final trauma designation level awarded to the facility and this designation may be different than the level requested based on the designation site survey summary. If the department determines the facility meets the requirements for trauma designation the department provides the facility with a designation award letter and a designation certificate. The facility must display its trauma designation certificate in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(d) Eligibility requirements for trauma designation.

(1) Health care facilities eligible for trauma designation include:

(A) a hospital in Texas, licensed or otherwise, in accordance with Texas Health and Safety Code Chapter 241;

(B) a hospital owned and operated by the State of Texas; or

(C) a hospital owned and operated by the federal government, in Texas.

(2) Each hospital must demonstrate the capability to stabilize and transfer or treat an acute trauma patient, have written trauma management guidelines for the hospital, have a written operational plan, and have a written trauma performance improvement and patient safety (PIPS) plan.

(3) Each hospital operating on a single hospital license with multiple locations (multi-location license) may apply for trauma designation separately by physical location for each designation.

(A) Hospital departments or services within a hospital must not be designated separately.

(B) Hospital departments located in a separate building not contiguous with the designated facility must not be designated separately.

(C) Each non-contiguous emergency department of a hospital operating on a single hospital license must have trauma patient care and transfers monitored through the main hospital's trauma program.

(e) A facility is defined under subsection (d) of this section as a single location where inpatients receive hospital services and inpatient care.

(1) Each facility location must meet the requirements for designation. The department defines the designation level based on the facility's ability to demonstrate designation requirements are met.

(2) Each facility must submit a separate trauma designation application based on its resources and the level of designation the facility is seeking.

(3) If there are multiple hospitals covered under a single hospital license, each hospital or physical location where inpatients receive hospital services and care may seek designation.

(4) Trauma designation is issued for the physical location and to the legal owner of the operations of the designated facility and is non-transferable.

(f) Facilities seeking trauma designation must meet department-approved requirements and have them validated by a department-approved survey organization.

(g) The four levels of trauma designation are as follows.

(1) Comprehensive trauma facility designation (Level I). The facility, including a free-standing children's facility, must:

(A) meet the current American College of Surgeons (ACS) trauma verification standards for Level I and receive a letter of verification from the ACS;

(B) meet the state trauma designation requirements;

(C) meet the participation requirements for the local RAC;

(D) have appropriate services for dealing with stressful events available to emergency and trauma care providers; and

(E) submit quarterly trauma data to the State Trauma Registry, defined in Chapter 103 (relating to Injury Prevention and Control).

(2) Major trauma facility designation (Level II). The facility, including a free-standing children's facility, must:

(A) meet the current ACS trauma verification standards for Level II and receive a letter of verification from the ACS;

(B) meet the state trauma designation requirements;

(C) meet the participation requirements for the local RAC;

(D) have appropriate services for dealing with stressful events available to emergency and trauma care providers; and

(E) submit quarterly trauma data to the State Trauma Registry, defined in Chapter 103 of this title (relating to Injury Prevention and Control).

(3) Advanced trauma facility designation (Level III). The facility, including a free-standing children's facility, must:

(A) meet the current ACS trauma verification standards for Level III and receive a letter of verification from the ACS, or complete a designation survey conducted by a department-approved survey organization;

(B) meet the state trauma designation requirements;

(C) meet the participation requirements for the local RAC;

(D) have appropriate services for dealing with stressful events available to emergency and trauma care providers; and

(E) submit quarterly trauma data to the State Trauma Registry, defined in Chapter 103 of this title (relating to Injury Prevention and Control).

(4) Basic trauma facility designation (Level IV). The facility, including a free-standing children's facility:

(A) Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must:

(i) meet the current ACS trauma verification standards for Level IV and complete a designation survey conducted by a department-approved survey organization;

(ii) meet the state trauma designation requirements;

(iii) meet the participation requirements for the local RAC;

(iv) have appropriate services for dealing with stressful events available to emergency and trauma care providers; and

(v) submit quarterly trauma data to the State Trauma Registry, defined in Chapter 103 of this title (relating to Injury Prevention and Control).

(B) Level IV facilities evaluating and admitting 100 or less trauma patients annually meeting NTDB registry inclusion criteria must:

(i) meet the defined state trauma designation requirements and complete a designation survey with the department or with a department-approved survey organization;

(ii) meet the participation requirements for the local RAC;

(iii) have appropriate services for dealing with stressful events available to emergency and trauma care providers; and

(iv) submit quarterly trauma data to the State Trauma Registry, defined in Chapter 103 of this title (relating to Injury Prevention and Control).

(h) All facilities seeking trauma designation must meet the following requirements.

(1) Facilities must have documented evidence of participation in the local RAC.

(2) Facilities must have evidence of quarterly trauma data submissions to the State Trauma Registry for patients that meet NTDB registry inclusion criteria, following the National Trauma Data Standards (NTDS) definitions and state definitions.

(3) Facilities must have emergency medical services (EMS) communication capabilities.

(4) Facilities must have provisions to capture the EMS wristband number or measures for patient tracking in resuscitation documentation.

(5) Facilities must have provisions to provide and document EMS hand-off.

(6) Facilities must have landing zone capabilities or system processes to establish a landing zone (when rotor-wing capabilities are available) with appropriate staff safety training.

(7) Facilities must have a process to provide feedback to EMS providers.

(8) All levels of trauma facilities must have written trauma management guidelines specific to the hospital that align with evidence-based practices and current national standards, which must be reviewed a minimum of every three years. These guidelines must be specific to the trauma patient population evaluated and admitted by the facility. Guidelines must be established for the following:

(A) trauma activation and response time based on national recommendations;

(B) trauma resuscitation and documentation;

(C) consultation services requests and response;

(D) admission and transfer;

(E) screening, management, and appropriate interventions or referral for both suspected and confirmed abuse of all patient populations; and

(F) massive transfusion.

(9) Facilities must have defined documentation of trauma management guidelines pertinent to the care of trauma patients in all nursing units providing care to the trauma patient.

(10) The written trauma management guidelines must be monitored though the trauma PIPS process.

(11) The trauma program must have provisions for the availability of all necessary equipment and services to administer the appropriate level of care and support for the injured patient meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria through the continuum of care to discharge or transfer.

(12) All levels of adult trauma facilities must meet and maintain the Emergency Medical Services for Children's Pediatric Readiness Criteria, as evidenced by the following:

(A) annual completion of the on-line National Pediatric Readiness Project assessment (https://pedsready.org), including a written plan of correction (POC) for identified opportunities for improvement that is monitored through the trauma PIPS plan until resolution;

(B) pediatric equipment and resources immediately available at the facility, and staff with defined and documented competency skills and training on the pediatric equipment;

(C) education and training requirements for Emergency Nursing Pediatric Course (ENPC) or Pediatric Advanced Life Support (PALS) for the nurses responding to pediatric trauma activations;

(D) assessments and documentation include Glasgow Coma Score (GCS); complete vital signs to include temperature, heart rate, respirations, and blood pressure; pain assessment; and weight recorded in kilograms;

(E) serial vital signs, GCS, and pain assessments are completed and documented for the highest level of trauma activations or when shock, a traumatic brain injury, or multi-system injuries are identified;

(F) pediatric imaging guidelines and processes addressing pediatric age or weight-based appropriate dosing for studies imparting radiation consistent with the ALARA (as low as reasonably achievable) principle; and

(G) documented evidence the trauma facility has completed a pediatric trauma resuscitation simulation with medical staff participation every six months, including a completed critique identifying opportunities for improvement integrated into the trauma performance improvement initiatives and tracked until the identified opportunities are corrected. An adult trauma facility evaluating and managing 200 or more patients less than 15 years of age with an injury severity score (ISS) of 9 or greater is exempt from this requirement of pediatric trauma simulations. If the facility has responded to an actual pediatric trauma resuscitation event during a six-month period, the facility is exempt from this training but must have documented evidence of participation in the after-action-review.

(13) Free-standing children's trauma facilities must have resources and equipment immediately available for adult trauma resuscitations, adherence to the nursing requirements for Trauma Nurse Core Course (TNCC) or Advanced Trauma Care for Nurses (ATCN), documented evidence the trauma program has completed an adult trauma resuscitation simulation with medical staff participation every six months, including a completed critique identifying opportunities for improvement integrated into the trauma performance improvement initiatives and tracked until the identified opportunities are corrected. Free-standing children's trauma facilities evaluating and managing 200 adult patients 15 years or older with an ISS of 9 or greater are exempt from this requirement for adult trauma simulations.

(14) Rural Level IV trauma facilities in a county with a population less than 30,000 may utilize telemedicine resources with an Advanced Practice Provider (APP) available to respond to the trauma patient's bedside within 15 minutes of notification, with written resuscitation and trauma management guidelines monitored through the trauma performance improvement and patient safety processes.

(A) The APP must be current in Advance Trauma Life Support (ATLS) training, annually maintain an average nine hours of trauma-related continuing medical education, and demonstrate adherence to the trauma patient management guidelines and documentation standards.

(B) The facility must have a documented telemedicine physician credentialing process.

(C) All assessments, physician orders, and interventions initiated through telemedicine must be documented in the patient's medical record.

(15) Telemedicine in trauma facilities in a county with a population of 30,000 or more, if utilized, must have a documented physician credentialing process, written trauma protocols for utilization of telemedicine including physician response times, and measures to ensure the trauma management guidelines and evidence-based practice are monitored through the trauma performance improvement and patient safety processes.

(A) Telemedicine cannot replace the requirement for the trauma on-call physician to respond to the trauma activations in-person, to conduct inpatient rounds, or to respond to the inpatient units, when requested.

(B) All telemedicine assessments, physician orders, and interventions initiated through telemedicine must be documented in the patient's medical record.

(C) Telemedicine services or the telemedicine physician may be requested to assist in trauma performance improvement committee reviews.

(16) The trauma medical director (TMD) must define the role and expectations of the hospitalist or intensivist in providing care to the admitted injured patient meeting trauma activation guidelines and meeting NTDB registry inclusion criteria.

(17) A trauma program manager (TPM) or designee must be a participating member of the nurse staffing committee.

(18) The facility must maintain medical records facilitating the documentation of trauma patient arrival, level of activation, physician response and team response times, EMS hand-off, resuscitation, assessments, vital signs, GCS, serial evaluation of needs, interventions, patient response to interventions, reassessments, and re-evaluation through all phases of care to discharge or transfer out of the facility.

(19) Level I, II, and III facilities, and Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must have an organized, effective trauma service recognized in the medical staff bylaws or rules and regulations and approved by the governing body. Medical staff credentialing must include a process for requesting and granting delineation of privileges for the TMD to oversee the providers participating in trauma call coverage, the trauma panel, and trauma management through all phases of care.

(20) Level I, II, and III facilities, and Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must have a TMD with requirements aligned with the current ACS standards specific to the level of designation requested. The TMD must complete a trauma performance improvement course approved by the department.

(21) Level I, II, and III facilities, and Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must have an identified TPM responsible for monitoring trauma patient care throughout the continuum of care, from pre-hospital management to trauma activation, inpatient admission, and transfer or discharge, to include transfer follow-up as appropriate. The TPM must be a registered nurse with clinical background in trauma care and must have completed a trauma performance improvement course approved by the department and the Association for the Advancement of Automotive Medicine (AAAM) Injury Scaling Course. It is recommended to complete courses specific to the TPM role. The role must be only for that facility and cannot cover multiple facilities. The TPM authority and responsibilities are aligned with the current ACS standards for the specific level of designation.

(22) The facility must have an organizational structure that facilitates the TPM's review of trauma care from admission to discharge, allowing for recommendations to improve care through all phases of care, and a reporting structure to an administrator having

the authority to recommend and monitor facility system changes and oversee the trauma program.

(23) All levels of trauma facilities must maintain a continuous trauma PIPS plan. The plan must be data-driven and must:

(A) identify variances in care or system response events for review, including factors that led to the event, delays in care, hospital events such as complications, and all trauma deaths;

(B) define the levels of harm;

(C) define levels of review;

(D) identify factors that led to the event;

(E) identify opportunities for improvement;

(F) establish action plans to address the opportunities for improvement;

(G) monitor the action plan until the desired change is met and sustained;

(H) establish a concurrent PIPS process;

(I) meet staffing standards that align with the ACS standards for performance improvement personnel; and

(J) utilize terminology for classifying morbidity and mortality with the terms:

(i) morbidity or mortality without opportunity;

(ii) morbidity or mortality with opportunity for improvement; and

(iii) morbidity or mortality with regional opportunity for improvement.

(24) The trauma PIPS plan must be approved by the TMD, TPM, and the trauma operations committee and be disseminated to all departments providing care to the trauma patient. The departments must ensure staff are knowledgeable of the responsibilities in the trauma PIPS plan and the requested data and information to be presented at the trauma operations committee.

(25) The Level I, II, and III facilities, and Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must demonstrate that the TMD chairs the secondary level of performance review, chairs the trauma multidisciplinary peer review committee, and co-chairs the trauma operations committee with the TPM.

(26) The trauma PIPS plan must outline the roles and responsibilities of the trauma operations committee and its membership.

(27) The trauma facility must document and include in its trauma PIPS plan the external review of the trauma verification and designation assessment questionnaire, designation survey documents, the designation survey summary report, including the medical record reviews, and all communication with the department.

(28) Trauma facilities must submit required trauma registry data every 90 days or quarterly to the State Trauma Registry and have documented evidence of data validation and correction of identified errors or blank fields.

(A) All levels of trauma facilities must demonstrate the current ACS standards for staffing requirements for the trauma registry are met.

(B) Trauma facilities utilizing a pool of trauma registrars must have an identified trauma registrar from the pool assigned to the facility to ensure data requests are addressed in a timely manner.

(29) All levels of trauma facilities must demonstrate the registered nurses assigned to care for arriving patients meeting trauma activation guidelines have current TNCC or ATCN, ENPC or PALS, and Advanced Cardiac Life Support certifications. Those new to the facility or the facility's trauma resuscitation area must meet these requirements within 18 months.

(30) Level I, II, and III facilities, and Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must have evidence the trauma program surgeons, trauma liaisons, trauma program personnel, operating suite leaders, and critical care medical director and nursing leaders complete a mass casualty response training on their roles, potential job functions, and job action sheets, to ensure competency regarding actions required for surge capacity, capabilities, and patient flow management from resuscitation to inpatient admission, operative suite, and critical care units or intensive care units during a multiple casualty or mass casualty event. If the facility has responded to an actual mass casualty event during a 12-month period, the facility is exempt from this training but must have documented evidence of participation in the after-action review.

(31) Level IV facilities evaluating and admitting 101 or more patients annually meeting NTDB registry inclusion criteria must:

(A) meet the current ACS Level IV standards and defined state requirements;

(B) have 24-hour on-site coverage by an emergency physician credentialed by the hospital and approved by the TMD to participate in the resuscitation and treatment of trauma patients of all ages and respond to trauma activation patients within 30 minutes of request;

(C) have documented guidelines for trauma activations, resuscitation guidelines, documentation standards, and patient transfers, and measures to monitor the guidelines through the trauma performance improvement process. Transfer reviews must include the time of arrival, transfer decision time, transfer acceptance time, transport arrival time, and time transferred;

(D) have documented management guidelines specific to the trauma patients admitted at the facility based on trauma registry data;

(E) have a written trauma PIPS plan that, at minimum, monitors:

(i) trauma team activations;

(ii) trauma team member response times;

(iii) trauma resuscitation guidelines;

(iv) documentation standards;

(v) trauma management guidelines;

(vi) pediatric trauma resuscitation guidelines;

(vii) transfer guidelines; and

(viii) all trauma deaths; and

(F) have provisions for a multidisciplinary trauma peer review committee and a trauma operations committee.

(32) Level IV facilities evaluating and admitting 100 or less trauma patients annually meeting NTDB registry inclusion criteria must:

(A) have 24-hour emergency services coverage by a physician credentialed by the hospital and approved by the TMD to

participate in the resuscitation and treatment of trauma patients of all ages and respond to trauma activation patients within 30 minutes of request;

(B) have a TMD overseeing and monitoring the trauma care provided and who is current in ATLS;

(C) have a TPM who is a registered nurse or have the TPM job functions integrated into the chief nursing officer (CNO) job functions and the TPM must:

(i) complete a trauma performance improvement course approved by the department;

(ii) complete a registry AAAM Injury Scoring Course; and

(iii) oversee and monitor trauma care provided;

(D) have documented guidelines for trauma team activation with response times, resuscitation guidelines, and documentation standards for resuscitation through admission, transfer, or discharge;

(E) have documented management guidelines specific for the trauma patients admitted to the facility;

(F) have documented transfer guidelines that are monitored to identify the arrival time, decision to transfer time, time of transfer acceptance, time of transport arrival, and time of transfer;

(G) have a trauma PIPS plan that, at minimum, monitors:

(i) trauma team activations;

(ii) trauma team member response times;

(iii) trauma resuscitation guidelines;

(iv) documentation standards;

(v) trauma management guidelines;

(vi) pediatric trauma resuscitation guidelines;

(vii) transfer guidelines; and

(viii) all trauma deaths;

(H) have provisions for a trauma multidisciplinary peer review process and operational oversight integrated into the hospitals performance review or quality review processes;

(I) have provisions for a trauma registry and submit the NTDB data to the State Trauma Registry quarterly to include each patient's ISS;

(J) have conventional radiology available 24-hours per day;

(K) have laboratory services available 24-hours per day for standard analysis of blood, urine, and other body fluids, including microbiologic sampling when appropriate;

(L) have blood bank capabilities including typing and cross-matching and have a minimum of two universal packed red blood cell units available; and

(M) participate in the local RAC.

(i) A facility seeking trauma designation or renewal of designation must submit the completed designation application packet, have the required documents available at the time of the designation survey, and submit the designation survey summary report and medical record reviews following the completed designation survey.

(1) A complete application packet contains the following:

(A) a trauma designation application for the requested level of trauma designation;

(B) a completed department designation assessment questionnaire;

(C) the documented trauma designation survey summary report that includes findings of requirements met and medical record reviews;

(D) evidence of documented data validation and quarterly submission to the State Trauma Registry and NTDB (if applicable) for the past 12 months;

(E) evidence of the facility's trauma program participation at RAC meetings throughout the designation cycle;

(F) full payment of the non-refundable, non-transferrable designation fee and department remit form submitted to the department Cash Branch per the designation application instructions; and

(G) the documentation in subparagraphs (A), (B), (D), and (E) of this paragraph must be submitted to the department and department-approved survey organization no less than 45 days before the facility's scheduled designation survey.

(2) The facility must have the required documents available and organized for the actual designation survey, including:

(A) documentation of a minimum of 12 months of trauma performance improvement and patient safety reviews, including minutes and attendance of the trauma operations meetings and the trauma multidisciplinary peer review committee meetings, all trauma-documented management guidelines or evidence-based practice guidelines, and all trauma-related policies, procedures, and diversion times;

(B) evidence of 12 months of trauma registry submissions to the State Trauma Registry;

(C) documentation of all injury prevention, outreach education, public education, and research activities (if applicable); and

(D) documentation to reflect designation requirements are met.

(3) Not later than 90 days after the trauma designation survey, the facility must submit to the department the following documentation:

(A) the documented trauma designation survey summary report that includes the requirements met and not met, and the medical record reviews; and

(B) a POC, if required by the department, which addresses all designation requirements defined as "not met" in the trauma designation survey summary report, which must include:

(i) a statement of the cited designation requirement not met;

(ii) a statement describing the corrective actions taken by the facility seeking trauma designation to meet the requirement;

(iii) the title of the individuals responsible for ensuring the corrective actions are implemented and monitored;

(iv) the date the corrective actions are implemented;

(v) a statement on how the corrective actions will be monitored and what data are measured to identify change;

(vi) documented evidence the POC is implemented within 60 days of the survey date; and

(vii) any subsequent documents requested by the department.

(4) The application includes full payment of the appropriate non-refundable, non-transferrable designation fee.

(A) For Level I and Level II trauma facility applicants, the fee is no more than $10 per licensed bed with an upper limit of $5,000 and a lower limit of $4,000.

(B) For Level III trauma facility applicants, the fee is no more than $10 per licensed bed with an upper limit of $2,500 and a lower limit of $1,500.

(C) For Level IV trauma facility applicants, the fee is no more than $10 per licensed bed with an upper limit of $1000 and a lower limit of $500.

(5) All application documents except the designation fee are submitted electronically to the department.

(j) Facilities seeking initial trauma designation must complete a scheduled conference call with the department and include the facility's chief executive officer (CEO), CNO, chief operating officer (COO), trauma administrator or executive leader, TMD, and TPM before scheduling the designation survey. The following information must be provided to the department before the scheduled conference call with the department:

(1) job descriptions for the TMD, TPM, and trauma registrar;

(2) trauma operational plan;

(3) trauma PIPS plan;

(4) trauma activation and trauma management guidelines; and

(5) trauma registry procedures.

(k) Facilities seeking designation renewal must submit the required documents described in subsection (i) of this section to the department no later than 90 days before the facility's current trauma designation expiration date.

(l) The application will not be processed if a facility seeking trauma designation fails to submit the required application documents and designation fee.

(m) A facility requesting designation at a different level of care or experiencing a change in ownership or a change in physical address must notify the department and submit a complete designation application packet and application fee.

(n) Level I, II, and III facilities, and Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must schedule a designation survey with a department-approved survey organization. All aspects of the designation survey process must follow the department designation survey guidelines. All initial designation surveys must be performed in person unless approval for virtual review is given by the department.

(1) Facilities requesting Level I and II trauma facility designation must request a verification survey through the ACS trauma verification program. This includes pediatric stand-alone facilities.

(2) Level III facilities must request a designation survey through either the ACS trauma verification program or through a department-approved survey organization.

(3) Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must schedule a designation survey with a department-approved survey organization.

(4) Level IV facilities evaluating and admitting 100 or less trauma patients annually meeting the NTDB registry inclusion criteria must schedule a designation survey with the department. The facility's executive officers may request, in writing, a designation survey with a department-approved survey organization.

(5) The facility must notify the department of the date of the scheduled designation survey a minimum of 60 days before the survey.

(6) The facility is responsible for any expenses associated with the designation survey.

(7) The department, at its discretion, may appoint a designation coordinator to participate in the survey process. The designation coordinator's costs are borne by the department.

(o) The survey team composition must be as follows:

(1) Level I or Level II facilities must be reviewed by a team consistent with the current ACS standards, currently participating in the management or oversight of trauma patients at a verified/designated Level I or II trauma facility and practicing outside of Texas. The facility's executive officers may request additional survey team members through the ACS.

(2) Level III facilities must be reviewed by a team consistent with the ACS current standards, currently participating in the management or oversight of trauma patients at a verified or designated Level I, II, or III trauma facility. The facility's executive officers may request additional survey team members through the survey organization.

(3) Level IV facilities must be reviewed by surveyors determined by the facility's number of trauma patients meeting NTDB registry inclusion criteria that are evaluated and admitted to the facility.

(A) Level IV facilities evaluating and admitting 101 or more trauma patients annually meeting NTDB registry inclusion criteria must be reviewed by a surgeon and a trauma program manager currently participating in trauma patient management or oversight at a Level I, II, or III designated facility. The facility's executive officers may request additional surveyor team members through the department-approved survey organization.

(B) Level IV facilities evaluating and admitting 100 or less trauma patients annually meeting NTDB registry inclusion criteria complete a designation survey with the department. The facility's executive officers may request, in writing, a designation survey with a department-approved survey organization. If a department-approved survey is requested, an emergency medicine physician or family practice physician, or surgeon currently serving in the role of a trauma medical director or trauma liaison, must complete the designation survey.

(p) Trauma facilities seeking designation or redesignation and department-approved survey organizations must follow the department survey guidelines and ensure all surveyors follow these guidelines.

(1) All members of the survey team for Level III or IV, except department staff, must not be from the same TSA or a contiguous TSA of the facility's location without the written approval from the de-

partment. There must be no business or patient care relationship or any known conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(2) The facility must not accept surveyors with any known conflict of interest. If a conflict of interest is present, the facility seeking trauma designation must decline the assigned surveyor through the survey organization.

(A) A conflict of interest exists when the surveyor has a direct or indirect financial, personal, or other interest which would limit or could reasonably be perceived as limiting the surveyor's ability to serve in the best interest of the public.

(B) The conflict of interest may include a surveyor who, in the past four years:

(i) has trained or supervised key hospital or medical staff in residency or fellowship;

(ii) collaborated professionally with key members of the facility's leadership team;

(iii) was employed in the same health care system in state or out of state;

(iv) participated in a designation consultation with the facility;

(v) had a previous working relationship with the facility or facility leader;

(vi) conducted a designation survey for the facility; or

(vii) is the EMS medical director for an agency that routinely transports trauma patients to the facility.

(3) If a designation survey occurs with a surveyor who has a known conflict of interest, the trauma designation survey summary report and medical record review may not be accepted by the department.

(4) A survey organization must complete an application requesting to perform designation surveys in Texas and be approved by the department. Each organization must renew its application every four years.

(q) Level I and II facilities using the ACS verification program who receive a Type I or three or more Type II standards not met, and Level III facilities surveyed by a department-approved survey organization with four or more requirements not met, must schedule a conference call with the department.

(r) If a health care facility seeking re-designation fails to meet the requirements outlined in subsection (j) of this section, the original designation expires on its expiration date. The facility must wait six months and begin the process again to continue as a designated trauma facility.

(s) If a facility disagrees with the designation level awarded by the department, the CEO, CNO, or COO may request an appeal, in writing, sent to the EMS/Trauma Systems Section director not later than 30 days after the issuance date of a designation award.

(1) All written appeals are reviewed quarterly by the EMS/Trauma Systems Section director in conjunction with the Trauma Designation Review Committee.

(A) The Trauma Designation Review Committee consists of the following individuals for trauma designation appeals, exception requests, or contingent designation survey summaries:

(i) chair of Governor's EMS and Trauma Advisory Council (GETAC);

(ii) chair of the GETAC Trauma System Committee;

(iii) current president of the Texas Trauma Coordinators Forum;

(iv) two individuals who each have a minimum of 10 years of trauma facility oversight as an administrator, medical director, program manager, or program liaison, all selected by the current chair of GETAC and approved by the EMS/Trauma Systems Section director and Consumer Protection Division (CPD) associate commissioner; and

(v) three department representatives from the EMS/Trauma Systems Section.

(B) The Trauma Designation Review Committee meetings are closed to maintain confidentiality for all reviews.

(C) The GETAC chair and the chair of the Trauma System Committee are required to attend the Trauma Designation Review Committee, in addition to a minimum of three of the other members, to conduct meetings with the purpose of reviewing trauma facility designation appeals, exception requests, and contingent designation survey summaries that identify requirements not met. Agreement from a majority of the members present is required.

(2) If the Trauma Designation Review Committee supports the department's designation determination, the EMS/Trauma Systems Section director gives written notice of the review and determination to the facility not later than 30 days after the committee's recommendation.

(3) If the Trauma Designation Review Committee recommends a different level of designation, it will provide the recommendation to the department. The department reviews the recommendation and determines the approved level of designation. Additional actions, such as a focused review, re-survey, or submission of information and reports to maintain designation, may be required by the department for identified designation requirements not met or only partially met.

(4) If a facility disagrees with the department's awarded level of designation, the facility may request a second appeal review with the department's CPD associate commissioner. The appeal must be submitted to the EMS/Trauma Systems Section no later than 15 days after the issuance date of the department's designation. If the CPD associate commissioner disagrees with the Trauma Designation Review Committee's recommendation, the CPD associate commissioner decides the appropriate level of designation awarded. The department sends a notification letter of the second appeal decision within 30 days of receiving the second appeal request.

(5) If the facility continues to disagree with the second level of appeal, the facility may request a hearing, governed by the department's rules for a contested case hearing and by Texas Administrative Procedure Act, Texas Government Code Chapter 2001, and the department's formal hearing procedures in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(t) All designated facilities must follow the exceptions and notifications process outlined in the following paragraphs.

(1) A designated trauma facility must provide written or electronic notification of any significant change to the trauma program impacting the capacity or capabilities to manage and care for a trauma patient. The notification must be provided to:

(A) all EMS providers that transfer trauma patients to or from the designated trauma facility;

(B) the hospitals to which it customarily transfers out or from which it transfers in trauma patients;

(C) applicable RACs; and

(D) the department.

(2) If the designated trauma facility is unable to meet the requirements to maintain its current designation, it must submit to the department a documented POC and a request for a temporary exception to the designation requirements. Any request for an exception must be submitted in writing from the facility's CEO and define the facility's timeline to meet the designation requirements. The department reviews the request and the POC and either grants the exception with a timeline based on access to care, including geographic location, other levels of trauma facilities available, transport times, impact on trauma outcomes, and the regional trauma system, or denies the exception. If the facility is not granted an exception or it does not meet the designation requirements at the end of the exception period, the department elects one of the following:

(A) review the exception request with the Trauma Designation Review Committee with consideration of geographic location, access to trauma care in the local area of the facility, and impact on the regional system;

(B) re-designate the facility at the level appropriate to its revised capabilities;

(C) outline an agreement with the facility to satisfy all designation requirements for the level of care designation within a time specified under the agreement, which may not exceed the first anniversary of the effective date of the agreement; or

(D) accept the facility's relinquishing of its trauma designation certificate.

(3) If the facility is relinquishing its trauma designation, the facility must provide 30 day written advance notice of the relinquishment to the department. The facility informs the applicable RACs, EMS providers, and facilities to which it customarily transfers out or from which it transfers in trauma patients. The facility is responsible for continuing to provide trauma care services or ensuring a plan for trauma care continuity for 30 days following the written notice of relinquishment of its trauma designation.

(u) A designated trauma facility may choose to apply for a higher level of designation at any time. The facility must follow the initial designation process described in subsection (i) of this section to apply for a higher level of trauma designation. The facility must not claim or advertise the higher level of designation until the facility has received written notification of the award of the higher level of designation.

(v) A hospital providing trauma services must not use or authorize the use of any public communication or advertising containing false, misleading, or deceptive claims regarding its trauma designation status. Public communication or advertising is deemed false, misleading, or deceptive if the facility uses these, or similar, terms:

(1) trauma facility, trauma hospital, trauma center, functioning as a trauma center, serving as a trauma center, or similar terminology if the facility is not currently designated as a trauma center or designated trauma center at that level; or

(2) comprehensive Level I trauma center, major Level II trauma center, advanced Level III trauma center, basic Level IV trauma center, or similar terminology in its signs, website, advertisements, social media, or in the printed materials and information it provides to the public that are different than the current designation level awarded by the department.

(w) During a virtual, on-site, or focused designation review conducted by the department or a department-approved survey organization, the department or surveyor has the right to review and evaluate the following documentation to validate designation requirements are met in this section and the Texas Health and Safety Code Chapter 773:

(1) trauma patient medical records;

(2) trauma PIPS plan and process documents;

(3) appropriate committee documentation for attendance, meeting minutes, and documents demonstrating why the case was referred, the date reviewed, pertinent discussion, and any actions taken specific to improving trauma care and outcomes; and

(4) documents relevant to trauma care in a designated trauma facility or facility seeking trauma facility designation to validate evidence designation requirements are met.

(x) The department and department-approved survey organizations must comply with all relevant laws related to the confidentiality of such records.

§157.128. Denial, Suspension, and Revocation of Trauma Facility Designation.

(a) A [~~An applicant/healthcare~~] facility's application for designation may be denied or a [~~healthcare~~] facility's [~~trauma~~] designation may be suspended or revoked for failure to meet designation requirements, or for any of [~~, but not limited to,~~] the following reasons:

(1) failure to comply with the statute and this chapter [~~these sections~~];

(2) willful preparation or filing of false reports or records;

(3) fraud or deceit in obtaining or attempting to obtain designation status;

(4) failure to submit data to the State Trauma [~~Texas EMS/Trauma~~] Registry;

(5) failure to maintain required licenses, designations, and accreditations or when disciplinary action has been taken against the health care [~~healthcare~~] facility by a state or national licensing agency;

(6) failure to have appropriate staff, [~~or~~] equipment, or resources required for designation routinely available [~~as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation)~~];

[~~(7) abuse or abandonment of a patient;~~]

(7) [~~(8)~~] unauthorized disclosure of medical or other confidential information;

(8) [~~(9)~~] alteration or inappropriate destruction of medical records; or

(9) [~~(10)~~] refusal to render care because of a patient's race, color, sex, pregnancy, [~~creed,~~] national origin, religion, sexual preference, age, disability, [~~handicap,~~] medical condition, [~~problem,~~] or inability to pay.[~~; or~~]

[~~(11) criminal conviction(s) as described in the Occupations Code, Chapter 53, Subchapter B.~~]

(b) Intermittent [~~Occasional~~] failure of a [~~healthcare~~] facility to meet designation criteria is [~~shall~~] not [~~be~~] grounds for denial, suspension, or revocation by the department [~~Office of EMS/Trauma Systems Coordination (office)~~], if the circumstances under which the failure occurred:

(1) do not reflect an overall deterioration in quality of trauma care; and

(2) are corrected within a reasonable timeframe by the [~~healthcare~~] facility.

(c) If the department [~~office~~] proposes to deny, suspend, or revoke a designation, the department [~~office~~] must [~~shall~~] notify the [~~healthcare~~] facility at the address shown in [~~the~~] current department records [~~of the department~~]. The notice must [~~shall~~] state the alleged facts that warrant the proposed action and state [~~that~~] the [~~healthcare~~] facility has an opportunity to appeal the proposed action through the Trauma Designation Review Committee as described in §157.126(s) of this subchapter (relating to Trauma Facility Designation Requirements Effective on September 1, 2025) or request a hearing in the manner referenced for contested cases [~~accordance with~~] in Texas Government Code[~~,~~] Chapter 2001.

(1) A request for a hearing must [~~shall~~] be in writing and submitted to the department [~~Office of EMS/Trauma Systems Coordination and postmarked~~] within 15 days of the issuance date [~~the notice was sent~~].

(2) If the [~~healthcare~~] facility fails to [~~timely~~] submit a written request for a hearing, it will be deemed to have waived the opportunity for a hearing and the proposed action will be ordered.

(d) Six months after the denial of an applicant [~~applicant/healthcare~~] facility's designation, the applicant [~~applicant/healthcare~~] facility may reapply for [~~trauma~~] facility designation [~~as described in §157.125 of this title~~].

(e) One year after the revocation of a [~~healthcare~~] facility's designation, the [~~healthcare~~] facility may reapply for designation [~~as described in §157.125 of this title~~]. The department [~~office~~] may deny designation if the department [~~office~~] determines [~~that~~] the reason for the revocation continues to exist or if the facility otherwise does not continuously meet the designation requirements.

(f) The department informs the facility of the potential funding implications related to the designation denial, suspension, or revocation as outlined in:

(1) 1 Texas Administrative Code §355.8052 and §355.8065; and

(2) Section 157.130 of this subchapter (relating to Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Medical Services Account).

§157.130. Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Medical Services Account.

(a) Allocations determination under Texas Health and Safety Code §773.122 and Health and Safety Code Chapter 780.

(1) Department determination. The department determines each year:

(A) eligibility criteria for emergency medical services (EMS), trauma service area (TSA), and hospital allocations; and

(B) the amount of EMS, TSA, and hospital allocations based on language described in Texas Health and Safety Code §773.122 and Chapter 780.

(2) Eligibility requirements. To be eligible for funding from the accounts, all potential recipients must maintain the regional participation requirements.

(3) Extraordinary emergency funding.

(A) To be eligible to receive extraordinary emergency funding, an entity must meet the following requirements:

(i) be a licensed EMS provider, a designated trauma facility, or a recognized first responder organization (FRO);

(ii) submit a completed application and any additional documentation requested by the department; and

(iii) provide documentation of active participation in its local Regional Advisory Council (RAC).

(B) Incomplete applications will not be considered for extraordinary emergency funding.

(4) EMS allocation.

(A) The department contracts with each eligible RAC to distribute the county funds to eligible EMS providers based within counties aligned with the relevant TSA.

(i) The department evaluates submitted support documents per the contract statement of work. Awarded funds must be used in addition to current operational EMS funding of eligible recipients and must not supplant the operational budget.

(ii) Funds are allocated by county to be awarded to eligible providers in each county. Funds are non-transferable to other counties within the RAC if there are no eligible providers in a county.

(B) Eligible EMS providers may contribute funds for a specified purpose within the TSA when:

(i) all EMS providers received communication regarding the intent of the contributed funds;

(ii) the EMS providers voted and approved by majority vote to contribute funds; and

(iii) all EMS providers that did not support contributing funds, receive the eligible funding.

(C) To be eligible for funding from the EMS allocation, providers must:

(i) maintain and comply with all licensure requirements as described in §157.11 of this chapter (relating to Requirements for an EMS Provider License);

(ii) follow RAC regional guidelines regarding patient destination and transport in all TSAs where EMS is provided and verified by each RAC;

(iii) notify the RACs of any potential eligibility to receive funds and meet the RACs' participation requirements, if a provider is contracted to provide EMS within a county of any one TSA and whose county of licensure is another county not in or contiguous with that TSA; and

(iv) provide the department evidence of a contract or letter of agreement with each additional county government or taxing authority in which EMS is provided in any county beyond its county of licensure.

(D) Inter-facility transfer letters of agreement and contracts or mutual aid letters of agreement and contracts do not meet the requirement of a county contract.

(E) Contracts or letters of agreement must be submitted to the department on or before the stated department contract deadline of the respective year and provide evidence of continued coverage throughout the effective contract dates for which the eligibility of the EMS provider is being considered.

(F) EMS providers with contracts or letters of agreement on file with the department meeting the effective contract dates do not need to resubmit a copy of the contract or letter of agreement unless it has expired or will expire before the effective date of the next contract.

(G) The submitted contracts or letters of agreement must include effective dates to determine continued eligibility.

(H) EMS providers are responsible for ensuring all contracts or letters of agreement have been received by the department on or before the listed deadline to be considered for eligibility.

(I) Air ambulance providers must meet the same requirements as ground transport EMS providers to be eligible to receive funds from a specific county other than the county of licensure.

(J) If an EMS provider is licensed in a particular county for a service area considered a geo-political subdivision and whose boundary lines cross multiple county lines, it will be considered eligible for the EMS Allocation for all counties overlapped by that geo-political subdivision's boundary lines. Verification from local jurisdictions will be requested for every county that comprises the geo-political subdivision to determine funding eligibility for each county. The eligibility of EMS providers whose county of licensure is in a geo-political subdivision other than those listed in clauses (i) - (v) of this subparagraph will be evaluated on a case-by-case basis. Geo-political subdivisions include:

(i) municipalities;

(ii) school districts;

(iii) emergency service districts (ESDs);

(iv) utility districts; or

(v) prison districts.

(5) TSA allocation.

(A) The department contracts with eligible RACs to distribute the funds for the operation of the 22 TSAs and for equipment, communications, education, and training for the areas.

(B) To be eligible to distribute funding on behalf of eligible recipients in each county to the TSA, a RAC must be:

(i) officially recognized by the department as described in §157.123 of this subchapter (relating to Regional Advisory Councils);

(ii) in compliance with all RAC performance criteria, have a current RAC self-assessment, and have a current regional trauma and emergency health care system plan; and

(iii) incorporated as an entity exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments by being listed as an exempt organization under Section 501(c)(3).

(C) The TSA allocation distributed under this paragraph is based on the relative geographic size and population of each TSA and on the relative amount of trauma care provided.

(6) Hospital allocation. The department distributes funds to designated trauma facilities to subsidize a portion of uncompensated trauma care provided or to enhance the facility's delivery of trauma care.

(A) Funds distributed from the hospital allocations are made based on:

(i) the hospital being designated as a trauma facility by the department as defined in Texas Health and Safety Code Chapter 773;

(ii) the percentage of the hospital's uncompensated trauma care cost for patients meeting the National Trauma Data Bank (NTDB) registry inclusion criteria relative to the total uncompensated trauma care cost reported for the identified patient population by qualified facilities that year;

(iii) availability of funds; and

(iv) submission of a complete application to the department within the stated time frame. Incomplete applications will not be considered.

(B) Additional information may be requested by the department to determine eligibility for funding.

(C) A designated trauma facility in receipt of funding from the hospital allocation that fails to maintain its designation as required in §157.125 of this subchapter (relating to Requirements for Trauma Facility Designation Effective Through August 31, 2025) and §157.126 of this subchapter (relating to Trauma Facility Designation Requirements Effective on September 1, 2025), must return to the department all hospital allocation funds received in the prior 12 months within 90 days of failure to maintain trauma designation.

(D) The department may grant an exception to subparagraph (C) of this paragraph if it finds compliance with this section would not be in the best interest of the persons served in the affected local system.

(E) A facility must have no outstanding balance owed to the department or other state agencies before receiving any future disbursements from the hospital allocation.

(7) Department allocations. The department's process for funding allocations defined in this subsection applies to the account defined in Texas Health and Safety Code Chapter 780 and includes designated trauma facilities and those in active pursuit of trauma designation in the funding allocation.

(8) Department unawarded designation. An undesignated facility in active pursuit of designation but that has not been awarded a trauma designation by the department pursuant to Texas Health and Safety Code §780.004 must return to the department all funds received from the hospital allocation, plus a penalty of 10 percent of the awarded amount.

(b) Calculation methods. Calculation of county portions of the EMS allocation, the RAC portions of the TSA allocation, and the hospital allocation are:

(1) EMS allocation.

(A) EMS allocation is derived by adjusting the weight of the statutory criteria to ensure, as closely as possible:

(i) 40 percent of the funds go to urban counties; and

(ii) 60 percent of the funds go to rural counties.

(B) An individual county's portion of the EMS allocation is based on its geographic size, population, and the number of emergency health care runs, multiplied by adjustment factors determined by the department, so the distribution approximates the required percentages for urban and rural counties.

(C) The formula is:

(i) the county's population multiplied by an adjustment factor;

(ii) plus, the county's geographic size multiplied by an adjustment factor;

(iii) plus, the county's total emergency health care runs multiplied by an adjustment factor;

(iv) divided by 3; and

(v) multiplied by the total EMS allocation.

(D) The adjustment factors are manipulated so the distribution approximates the required percentages for urban and rural counties.

(E) Total emergency health care runs are the number of emergency patient care records electronically transmitted to the department in a given calendar year by EMS providers.

(2) TSA allocation.

(A) The TSA allocation is based on its relative geographic size, population, and trauma care provided as compared to all other TSAs.

(B) The formula is:

(i) the TSA's percentage of the state's total population;

(ii) plus, the TSA's percentage of the state's total geographic size;

(iii) plus, the TSA's percentage of the state's total trauma care;

(iv) divided by 3; and

(v) multiplied by the total TSA allocation.

(C) Total trauma care is the number of trauma patient records electronically transmitted to the department in a given calendar year by EMS providers and hospitals.

(3) Hospital allocation.

(A) Distributions, including unexpended portions of the EMS and TSA allocations, are determined by an annual application process.

(B) An annual application must be submitted each state fiscal year. Incomplete applications will not be considered for the hospital allocation calculation.

(C) Based on the information provided in the approved application, each facility will receive allocations as follows.

(i) An equal amount, not to exceed 20 percent of the available hospital allocation, to reimburse designated trauma facilities and those facilities in active pursuit of designation under the program.

(ii) Any funds not allocated in paragraphs (1) and (2) of this subsection are included in the distribution formula in subparagraph (E) of this paragraph.

(D) If the total cost of uncompensated trauma care for patients meeting NTDB registry inclusion criteria exceeds the amount appropriated from the account, minus the amount referred to in subparagraph (C)(i) of this paragraph, the department allocates funds based on a facility's percentage of uncompensated trauma care costs in relation to the total uncompensated trauma care cost reported by qualified hospitals for the funding year.

(E) The hospital allocation formula for trauma designated facilities is:

(i) the facility's reported costs of uncompensated trauma care;

(ii) minus any collections received by the facility for any portion of the facility's uncompensated trauma care previously reported for the purposes of this section;

(iii) divided by the total reported costs of uncompensated trauma care by eligible facilities; and

(iv) multiplied by the total money available after reducing the amount to be distributed in subparagraph (C)(i) of this paragraph.

(F) The reporting period of a facility's uncompensated trauma care must apply to costs incurred during the preceding calendar year.

(c) Loss of funding eligibility. If the department finds an EMS provider, RAC, or hospital has violated Texas Health and Safety Code Chapter 773 or fails to comply with this chapter, the department may withhold account monies for a period of one to three years, depending upon the seriousness of the infraction.

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 July 18, 2024.

TRD-202403179
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 535-8538

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CHAPTER 181. VITAL STATISTICS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §181.22, concerning Fees Charged for Vital Records Services; and the repeal of §181.35, concerning Parental Consent of Underage Applicants to Marriage.

BACKGROUND AND PURPOSE

The purpose of the proposal is to clarify and enhance the transparency of Vital Statistics fees in rule and to repeal outdated rules identified during the rule review process.

The amendment to §181.22 consolidates fees charged for vital records services to clearly state each fee amount. Currently, the public must add together separate fees to get the total fee for a vital record. There is no fee increase with this consolidation.

The expedited service fee, which shortens processing time, is available if the applicant chooses to pay the extra sum. The expedited service fee will increase from $5 to $25 per application. The current fee has not increased in 33 years and does not cover the costs for the service. The public does not need to pay this fee to obtain a vital record.

The amendment includes longstanding services being provided but were not listed in rule.

Section 181.35 is being repealed to comply with Senate Bill 1705, 85th Legislature, Regular Session, 2017, that repealed the statutory authority in the Texas Family Code §2.102.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §181.22 1) clarifies the fee for a copy or research copy of a birth, death, or fetal death record; 2) deletes the surcharge fee for searching and issuing each certified copy of a birth certificate because it was consolidated in the service fee; 3) renumbers and simplifies language of the fee for an heirloom birth certificate, the fee for a heirloom wedding anniversary certificate, the fee for a search of a vital record, and the fee for a birth verification, marriage verification, divorce verification, or death verification; 4) adds the fees for existing services which were not previously included in rule; 5) renumbers and simplifies language of the fee for an identification of the court that granted an adoption and for an amendment to a birth, death, or fetal death record; 6) renumbers and simplifies language of the fee for a new birth record based on adoption or parentage determination, the fee for a delayed record of birth, the fee for an inquiry of the paternity registry, the fee for an inquiry of the Acknowledgment of Paternity Registry, and the fee for enrolling in the Central Adoption Registry; 7) increases the fee and simplifies language of the fee for expedited service; 8) renumbers and simplifies language of the disinterment permit, waived fee for an applicant obtaining an election identification certificate, and the waived fee for applicants who are a victim, or child of a victim, of dating or family violence.

The proposed repeal of §181.35 deletes the rule as the rule is no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined for each year of the first five years §181.22 will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local governments.

The effect on state government for each year of the first five years the proposed §181.22 is in effect is an estimated increase in revenue of $75,000 in fiscal year (FY) 2025, $150,000 in FY 2026, $150,000 in FY 2027, $150,000 in FY 2028, and $150,000 in FY 2029.

Christy Havel Burton has determined for each year of the first five years the repeal of §181.35 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 during the first five years 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 DSHS 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 DSHS;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will 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

Christy Havel Burton has also determined 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, and 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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined for each year of the first five years the rules are in effect, the public benefit will be clearer and more transparent Vital Statistics fees in rule. Additionally, increasing the fee for expedited service will allow Vital Statistics to effectively provide this service for customers.

Christy Havel Burton, Chief Financial Officer, has also determined 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 one fee increase is a voluntary fee for expedited service, not in the fees required to pay to obtain vital records.

TAKINGS IMPACT ASSESSMENT

DSHS has determined 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.

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 24R032" in the subject line.

SUBCHAPTER B. VITAL RECORDS

25 TAC §181.22

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code §191.0045, which authorizes rules necessary to prescribe fees for vital statistics services.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapters 191, 192, 193, and 1001.

§181.22. Fees Charged for Vital Records Services.

(a) The fee for a certified copy or research copy of a birth record is $22.00 [~~shall be $10.00. Additional copies shall be $10.00 for each copy requested~~].

(b) The fee for a certified copy or research copy of a death or fetal death record is $20.00. The fee [~~certificate shall be $10.00 for the first or only copy requested, and $3.00~~] for each additional copy of the same record requested in the same order is $3.00 [~~request~~].

[~~(c) A surcharge of $2.00 shall be added to the fee for searching and issuing each certified copy of a certificate of birth, or conducting a search for a certificate of birth, as mandated by the Texas Health and Safety Code, §191.0045.~~]

(c) [~~(d)~~] The fee for an [~~issuing each~~] heirloom birth certificate is [~~, or gift certificate for such, shall be~~] $50.00. [~~If a record is not found, $38.00 of the fee shall be returned to the applicant.~~]

(d) [~~(e)~~] The fee for an heirloom [~~issuing each~~] wedding anniversary certificate is [~~or gift certificate for such shall be~~] $50.00.

(e) [~~(f)~~] The fee for a [~~to~~] search of a vital [~~for any~~] record or information on file within the Vital Statistics Section is [~~shall be~~] $10.00 [~~, regardless of whether a certified copy is issued or not~~].

(f) [~~(g)~~] The fee for a verification [~~search to verify the existence~~] of a birth [~~or death~~] record is $22.00 [~~shall be $10.00~~].

(g) [~~(h)~~] The fee for a verification of [~~search to verify~~] a marriage, [~~or~~] divorce, or death record is $20.00 [~~shall be $10.00~~].

(h) The fee for a photocopy of a marriage license application is $20.00.

(i) The fee for a certificate of birth resulting in stillbirth is $20.00.

(j) The fee for a file sealed by adoption or parentage determination is $10.00.

(k) The fee for a non-certified copy of an original birth certificate to an adult adoptee is $10.00.

(l) [~~(i)~~] The fee for an [~~a search and~~] identification of the court that granted an adoption is [~~shall be~~] $10.00.

(m) [~~(j)~~] The fee for [~~filing~~] an amendment to a birth, death, or fetal death record is [~~an existing certificate of birth or death on file with the Vital Statistics Section shall be~~] $15.00. [~~An amendment to a certificate includes adding information to a record to make it complete and changing information on a record to make it correct. An additional fee is required to issue a certified copy of the amended record.~~]

[~~(k) The fee for filing an amendment based on a court ordered name change shall be $15.00.~~]

(n) [~~(l)~~] The fee for a new birth record based on [~~upon~~] adoption or parentage determination is [~~shall be~~] $25.00.

(o) [~~(m)~~] The fee for [~~filing~~] a delayed record of birth is [~~shall be~~] $25.00.

(p) [~~(n)~~] The fee for a [~~search of the~~] Paternity Registry inquiry is [~~shall be~~] $10.00. [~~The fee includes a certification stating whether or not the requested information is located in the Registry.~~]

(q) [~~(o)~~] The fee for an [~~a search of the~~] Acknowledgment of Paternity Registry inquiry is [~~shall be~~] $10.00. The fee includes a certified copy of the Acknowledgement of Paternity, if found.

(r) [~~(p)~~] The fee for enrolling in [~~Each person applying to~~] the Central Adoption Registry is [~~shall pay a registration fee of~~] $30.00 [~~, which includes the $5.00 fee for determining if an agency that operates its own registry was involved in the adoption~~]. [~~(Also see §181.44 of this title (relating to the Inquiry Through the Central Index).)~~]

(s) [~~(q)~~] The fee [~~charged~~] for [~~an~~] expedited service is $25.00 for each application submission, in addition to required application fees [~~shall be $5.00 per request in addition to any other fee required. Expedited service is any service requested via fax or overnight mail service. The expedited fee is nonrefundable if a record or the information requested is not found.~~].

(t) [~~(r)~~] The fee for [~~the processing and issuance of~~] a disinterment permit is [~~shall be~~] $25.00. [~~The fee is to be paid by the applicant for the permit, and must be submitted with the application.~~]

[~~(s) A Texas Online fee of $10.00 shall be added to all requests for birth, death, marriage, and divorce record searches and document production.~~]

(u) [~~(t)~~] The [~~Except as provided in subsection (c) of this section, the~~] fee for a certified birth record [~~that otherwise is required under this section~~] is waived for an applicant who appears in person to obtain a certified copy from the department or a Local Registrar and states [~~represents that~~] the certified record is required for the purpose of obtaining an election identification certificate issued pursuant to Transportation Code[~~,~~] Chapter 521A.

(v) [~~(u)~~] The fee for a certified copy of a birth record is waived for an applicant who states [~~represents~~] the applicant is a victim, or child of a victim, of dating or family violence, pursuant to Texas Health and Safety Code §191.00491, who is fleeing a living situation due to dating or family violence and does not have personal identification documents.

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

Filed with the Office of the Secretary of State on July 17, 2024.

TRD-202403149
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 776-7646

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25 TAC §181.35

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize

the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code §191.0045, which authorizes rules necessary to prescribe fees for vital statistics services.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapters 191, 192, 193, and 1001.

§181.35. Parental Consent of Underage Applicants to Marriage.

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 July 17, 2024.

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Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 776-7646

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§260.5, concerning Definitions; 260.7, concerning Description of the Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC); 260.59, concerning Requirements for Home and Community-Based Settings; 260.203, concerning Qualifications of Program Provider Staff; 260.205, concerning Training; 260.341, concerning Employment Services; and 260.357, concerning Non-Billable Time and Activities.

BACKGROUND AND PURPOSE

The proposed amendments ensure compliance with Texas Human Resources Code §32.0755, add by House Bill 4169, 88th Legislature, Regular Session, 2023. Texas Human Resources Code §32.0755 requires HHSC to establish a service similar to prevocational services in HHSC's §1915(c) Medicaid waiver programs. The proposed amendments implement this new service, named employment readiness, in the Deaf Blind with Multiple Disabilities (DBMD) Program. The proposed amendments describe employment readiness and the requirements for the provision of employment readiness in the DBMD Program.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §260.5 adds and defines the terms, "employment readiness," "employment readiness location," and "job task-oriented" because these terms are used in the amended rules. The proposed amendment renumbers the paragraphs because of the new definitions added.

The proposed amendment to §260.7 adds employment readiness in subsection (c) to the list of services offered in the DBMD Program.

The proposed amendment to §260.59 adds a new subsection (d) to require a program provider to ensure that employment readiness is not provided in the residence of an individual or another person. The proposed amendment adds a new subsection (e) to the rule. Proposed new subsection (e)(1) requires a program provider to ensure that an employment readiness location, allows an individual to control the individual's schedule and activities, have access to the individual's food at any time, and have visitors of the individual's choosing at any time. Proposed new subsection (e)(2) requires a program provider to ensure an employment readiness location is physically accessible and free of hazards to an individual. The proposed amendment adds new subsections (f) and (g) that outline requirements for implementing a modification to a requirement in proposed new subsection (e)(1).

The proposed amendment to §260.203 adds the qualifications for a service provider of employment readiness in a new subsection (i). Specifically, the required qualifications include being at least 18 years of age; not being the parent, if the individual is under 18 years of age, or the spouse of the individual; having a high school diploma or the equivalent of a high school diploma; and having documentation of a proficiency evaluation of experience and competence to perform the job tasks as further outlined in the rule. The proposed amendment renumbers the remaining subsection after proposed new subsection (i).

The proposed amendment to §260.205 adds employment readiness in subsection (c)(1) and (3)(A); subsection (f)(1)(B) and (C); and subsection (g) to set forth the training requirements for a service provider of employment readiness. Specifically, the proposed training requirements include training and certification on cardiopulmonary resuscitation and choking prevention before assuming job duties; completion of the DBMD Program Service Provider Training as described in subsection (f)(2) of the rule; and training on the needs of an individual.

The proposed amendment to §260.341 adds new subsections (f) - (i) to provide a description of employment readiness. They prescribe what activities are required and prohibited in employment readiness, what services a program provider must provide, what a service provider may not provide, and what factors the program provider must consider related to eligibility and what documentation of eligibility the program provider must maintain, and the provision of employment readiness service to the individual must be supported by an HHSC Employment First Discovery Tool that is completed in accordance with §284.105 of this title (relating to Uniform Process).

The proposed amendment to §260.357 adds employment readiness in paragraph (8) to exclude employment readiness as a nonbillable activity for travel to and from an individual's residence.

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 rule(s) 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 expand 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, HHSC Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because any changes required by the programs to implement employment readiness services are included in providing contracted client services and the payment rate for providing services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, individuals in the DBMD Program will benefit from having an additional service to provide assistance with getting ready for competitive employment and furthering their employment goals.

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 create new regulations, standards, or processes for program providers and local intellectual and developmental disability authorities to comply. The new service, employment readiness, is included in providing contracted client services and the payment rate for providing services.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist 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.*

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 24R046" in the subject line.

SUBCHAPTER A. DEFINITIONS, DESCRIPTION OF SERVICES, AND EXCLUDED SERVICES

26 TAC §260.5, §260.7

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendments implement Texas Human Resources Code §32.0755.

§260.5. Definitions.

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

(1) Abuse--

(A) physical abuse;

(B) sexual abuse; or

(C) verbal or emotional abuse.

(2) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adaptive aid--A service in the Deaf Blind with Multiple Disabilities (DBMD) Program that:

(A) enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives; and

(B) meets one of the following criteria:

(i) is an item included in the list of adaptive aids in the *Deaf Blind with Multiple Disabilities Program Manual;* or

(ii) is the repair or maintenance of an item on the list of adaptive aids in the *Deaf Blind with Multiple Disabilities Program Manual* that is not covered by a warranty.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by an adaptive behavior screening assessment.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. There are four adaptive behavior levels ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using the current version of one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior; or

(D) Vineland Adaptive Behavior Scales.

(7) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(8) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(9) Alarm call--A signal transmitted from an individual's Community First Choice (CFC) Emergency Response Services (ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(10) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code Chapter 247.

(11) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

(12) Audiology--A DBMD Program service that provides assessment and treatment by a licensed audiologist and includes training and consultation with an individual's family members or other support providers.

(13) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(14) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific outcomes and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(15) Behavioral emergency--A situation in which an individual is acting in an aggressive, destructive, violent, or self-injurious manner that poses a risk of death or serious bodily harm to the individual or others.

(16) Behavioral support--A DBMD Program service that provides specialized interventions to assist an individual in increasing adaptive behaviors and replacing or modifying behaviors that prevent or interfere with the individual's inclusion in the community and consists of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training and consulting with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluating the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluating the plan's effectiveness; and

(F) counseling and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(17) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(18) Calendar day--Any day, including weekends and holidays.

(19) Case management--The DBMD Program service described in §260.337 of this chapter (relating to Case Management).

(20) Case manager--A service provider of case management.

(21) CDS option--Consumer directed services option. A service delivery option defined in 40 TAC §41.103 (relating to Definitions).

(22) CFC--Community First Choice.

(23) CFC ERS--CFC emergency response services. A CFC service that provides backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(24) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(25) CFC FMS--CFC financial management services. A CFC service provided to an individual who receives only CFC PAS/HAB through the CDS option.

(26) CFC PAS/HAB--CFC personal assistance services/habilitation. A CFC service:

(A) that consists of:

(i) personal assistance services, which provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation, which provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, including:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(27) CFC support consultation--A CFC service that provides support consultation to an individual who receives only CFC PAS/HAB through the CDS option.

(28) CFC support management--A CFC service that provides training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB.

(29) CFR--Code of Federal Regulations.

(30) Chemical restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(31) Chore services--A DBMD Program service, other than CFC PAS/HAB household chores, needed to maintain a clean, sanitary, and safe environment in an individual's home and consists of heavy household chores, such as washing floors, windows, and walls, securing loose rugs and tiles, and moving heavy items or furniture.

(32) CMS--The Centers for Medicare & Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(33) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(34) Contract--A provisional contract that the Texas Health and Human Services Commission enters into in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with 40 TAC §49.208(e) or a standard contract that HHSC enters into in accordance with 40 TAC §49.209 (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with 40 TAC §49.209(d).

(35) Controlling person--A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(36) Day Activity and Health Services Program--This term has the meaning set forth in Texas Human Resource Code §103.003.

(37) DBMD Program--The Deaf Blind with Multiple Disabilities Program.

(38) Deafblindness--A chronic condition in which a person:

(A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

(B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(39) Denial--An action taken by HHSC that:

(A) rejects an individual's request for enrollment into the DBMD Program;

(B) disallows a DBMD Program service or a CFC service requested on an individual plan of care (IPC) that was authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a DBMD Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(40) Dental treatment--A DBMD Program service that:

(A) consists of the following:

(i) emergency dental treatments, which are procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatments, which are examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatments, which include fillings, scaling, extractions, crowns, and pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatments, which are procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment;

and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labiolingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(41) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(42) DFPS--Department of Family and Protective Services.

(43) Dietary services--A DBMD Program service that provides nutrition services, as defined in Texas Occupations Code §701.002.

(44) Employment assistance--A DBMD Program service that provides assistance to an individual to help the individual locate competitive employment in the community to the same degree of access as individuals not receiving DBMD Program services.

(45) Employment readiness--The DBMD Program service described in §260.341 of this chapter (relating to Employment Services).

(46) Employment readiness location--A location where employment readiness is provided.

(47) [~~(45)~~] Enrollment Individual Plan of Care (IPC)--The first IPC for an individual developed before the individual's enrollment into the DBMD Program.

(48) [~~(46)~~] Enrollment Individual Program Plan (IPP)--The first IPP for an individual developed before the individual's enrollment into the DBMD Program in accordance with §260.65 of this chapter (relating to Development of an Enrollment IPP).

(49) [~~(47)~~] Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(50) [~~(48)~~] FMS--Financial management services. A DBMD Program service that is defined in 40 TAC §41.103 and provided to an individual participating in the CDS option.

(51) [~~(49)~~] FMSA--Financial management services agency. An entity, as defined in 40 TAC §41.103, that provides FMS.

(52) [~~(50)~~] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(53) [~~(51)~~] Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(54) [~~(52)~~] Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(55) [~~(53)~~] Good cause--As determined by HHSC, A reason outside the control of a CFC ERS provider that is an acceptable reason for the CFC ERS provider's failure to comply.

(56) [~~(54)~~] HCSSA--Home and community support services agency. An entity required to be licensed under Texas Health and Safety Code (THSC) Chapter 142.

(57) [~~(55)~~] Health-related tasks--Specific tasks related to the needs of an individual that can be delegated or assigned by a licensed healthcare professional under state law to be performed by a service provider of CFC PAS/HAB. These include:

(A) tasks delegated by a registered nurse (RN);

(B) health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and

(C) activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(58) [~~(56)~~] HHSC--The Texas Health and Human Services Commission.

(59) [~~(57)~~] Hospital--A public or private institution that is licensed or is exempt from licensure in accordance with THSC Chapters 13, 241, 261, or 552.

(60) [~~(58)~~] IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(61) [~~(59)~~] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is A facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(62) [~~(60)~~] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(63) [~~(61)~~] ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form used to determine the LOC for an individual.

(64) [~~(62)~~] Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(65) [~~(63)~~] Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(66) [~~(64)~~] Individual transportation plan--A written plan developed by an individual's service planning team and documented on the HHSC Individual Transportation Plan form. The form is used to document how transportation as a residential habilitation activity will be delivered to support an individual's desired goals and outcomes for transportation as identified in the IPP.

(67) [~~(65)~~] Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464.

(68) [~~(66)~~] In person or in-person--Within the physical presence of another person. In person or in-person does not include using videoconferencing or a telephone.

(69) [~~(67)~~] Institution for mental diseases--Has the meaning set forth in 42 CFR §435.1010.

(70) [~~(68)~~] Institutional services--Medicaid-funded services provided in a nursing facility or in an ICF/IID.

(71) [~~(69)~~] Intellectual disability--Consistent with THSC §591.003, significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(72) [~~(70)~~] Intervener--A service provider with specialized training and skills in deafblindness who, working with one individual at a time, serves as a facilitator to involve an individual in home and community services and activities, and who is classified as an Intervener, Intervener I, Intervener II, or Intervener III in accordance with Texas Government Code §531.0973.

(73) [~~(71)~~] IPC--Individual plan of care. A written plan developed by an individual's service planning team and documented on the HHSC Individual Plan of Care form. An IPC:

(A) documents:

(i) the type and amount of each DBMD Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year; and

(ii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(74) [~~(72)~~] IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of the enrollment IPC, as described in §260.67(a)(1)(F) of this chapter (relating to Development of a Proposed Enrollment IPC), through the last calendar day of the 11th month after the month in which enrollment occurred; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §260.77(a)(1) of this chapter (relating to Renewal and Revision of an IPP and IPC).

(75) [~~(73)~~] IPP--Individual program plan. A written plan that includes the information described in §260.65(b) of this chapter (relating to Development of an Enrollment IPP) and documented on an HHSC Individual Program Plan form.

(76) Job task-oriented--Focused on developing a skill related to a specific type of employment.

(77) [~~(74)~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(78) [~~(75)~~] Licensed assisted living--A DBMD Program service provided by a program provider in an ALF that is owned by the program provider.

(79) [~~(76)~~] Licensed home health assisted living--A DBMD Program service provided by a program provider licensed as a HCSSA, in a residence for no more than three individuals. The residence must be owned or leased by at least one of the residents and must not be owned or leased by a program provider.

(80) [~~(77)~~] Licensed vocational nursing--A DBMD Program service that provides vocational nursing, as defined in Texas Occupations Code §301.002.

(81) [~~(78)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(82) [~~(79)~~] LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(83) [~~(80)~~] LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code Chapter 301.

(84) [~~(81)~~] Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

(85) [~~(82)~~] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(86) [~~(83)~~] Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body. The term does not include a protective device.

(87) [~~(84)~~] Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(88) [~~(85)~~] Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(89) [~~(86)~~] Mental health facility--A facility licensed in accordance with THSC Chapter 577.

(90) [~~(87)~~] MESAV--Medicaid Eligibility Service Authorization Verification. The automated system that contains information regarding an individual's Medicaid eligibility and service authorizations.

(91) [~~(88)~~] Military family member--A person who is the spouse or child, regardless of age, of:

(A) a military member; or

(B) a former military member.

(92) [~~(89)~~] Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(93) [~~(90)~~] Minor home modifications--A DBMD Program service that:

(A) makes a physical adaptation to an individual's residence that:

(i) is necessary to address the individual's specific needs; and

(ii) enables the individual to function with greater independence in the individual's residence or to control his or her environment; and

(B) meets one of the following criteria:

(i) is included on the list of minor home modifications in the *Deaf Blind with Multiple Disabilities Program Manual;* or

(ii) is the repair or maintenance of a minor home modification purchased through the DBMD Program that:

(I) is needed after one year has elapsed from the date the minor home modification is complete;

(II) is needed for a reason other than the minor home modification was intentionally damaged, as described in §260.329(c) of this chapter (relating to Repair or Replacement of a Minor Home Modification); and

(III) is not covered by a warranty.

(94) [~~(91)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(95) [~~(92)~~] Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(96) [~~(93)~~] Nursing--One or more of the following DBMD Program services:

(A) licensed vocational nursing;

(B) registered nursing;

(C) specialized licensed vocational nursing; and

(D) specialized registered nursing.

(97) [~~(94)~~] Nursing facility--A facility that is licensed or exempt from licensure in accordance with the THSC Chapter 242.

(98) [~~(95)~~] Occupational therapy--A DBMD Program service that provides occupational therapy, as described in Texas Occupations Code §454.006.

(99) [~~(96)~~] Orientation and mobility--A DBMD Program service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

(100) [~~(97)~~] PAS/HAB plan--Personal Assistance Services (PAS)/Habilitation Plan. A written plan developed by an individual's service planning team and documented on the HHSC Personal Assistance Services (PAS)/Habilitation Plan form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(101) [~~(98)~~] Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(102) [~~(99)~~] Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(103) [~~(100)~~] Person-centered planning process--The process described in §260.57 of this chapter (relating to Person-Centered Planning Process).

(104) [~~(101)~~] Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

(105) [~~(102)~~] Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(106) [~~(103)~~] Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(107) [~~(104)~~] Physical therapy--A DBMD program service that provides physical therapy, as defined in Texas Occupations Code §453.001.

(108) [~~(105)~~] Physician--Consistent with §558.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health or hospice services for the individual in accordance with Texas Occupations Code §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code §151.052(a)(8).

(109) [~~(106)~~] Program provider--A person that has a contract with HHSC to provide DBMD Program services, excluding an FMSA.

(110) [~~(107)~~] Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

(A) used only:

(i) to protect an individual from injury; or

(ii) for body positioning of the individual to ensure health and safety; and

(B) not used to modify or control behavior.

(111) [~~(108)~~] Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(112) [~~(109)~~] Reduction--An action taken by HHSC as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by HHSC on the prior IPC.

(113) [~~(110)~~] Registered nursing--A DBMD Program service that provides professional nursing, as defined in Texas Occupations Code §301.002.

(114) [~~(111)~~] Related condition--As defined in 42 CFR §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(115) [~~(112)~~] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *Deaf Blind with Multiple Disabilities Program Manual.*

(116) [~~(113)~~] Renewal IPC--An IPC developed in accordance with §260.77 of this chapter.

(117) [~~(114)~~] Residential child-care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(118) [~~(115)~~] Respite--A DBMD Program service described in §260.353 of this chapter (relating to Respite).

(119) [~~(116)~~] Responder--A person designated to respond to an alarm call activated by an individual.

(120) [~~(117)~~] Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a chemical restraint.

(121) [~~(118)~~] Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations, or activities, or restricts an individual's rights, including a restraint, a protective device, and seclusion.

(122) [~~(119)~~] Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §260.77 of this chapter to add a new DBMD Program service or CFC service or change the amount of an existing service.

(123) [~~(120)~~] RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code Chapter 301.

(124) [~~(121)~~] Seclusion--A restrictive intervention that is the involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(125) [~~(122)~~] Service backup plan--A written plan developed and revised by an individual's service planning team in accordance with §260.213 of this chapter (relating to Service Backup Plans) to ensure continuity of critical program services if service delivery is interrupted.

(126) [~~(123)~~] Service planning team--A team consisting of:

(A) the individual;

(B) if applicable, the individual's LAR or an actively involved person;

(C) the individual's case manager;

(D) one of the following persons who is not the case manager:

(i) the program director; or

(ii) an RN designated by the program provider;

(E) other persons whose inclusion is requested by the individual, LAR, or actively involved person, including a managed care organization service coordinator, a family member, a friend, and a teacher; and

(F) other persons selected by the program provider who are:

(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(127) [~~(124)~~] Service provider--A person who is an employee or contractor of a program provider who provides a DBMD Program service or a CFC service directly to an individual.

(128) [~~(125)~~] Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff person, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff person, volunteer, or controlling person became a service provider, staff person, volunteer, or controlling person.

(129) [~~(126)~~] Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(130) [~~(127)~~] Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(131) [~~(128)~~] Significant subaverage general intellectual functioning--Consistent with THSC §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(132) [~~(129)~~] Specialized licensed vocational nursing--A DBMD Program service that provides licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(133) [~~(130)~~] Specialized registered nursing--A DBMD Program service that provides registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(134) [~~(131)~~] Speech-language pathology--A DBMD Program service that provides speech-language pathology as defined in Texas Occupations Code §401.001.

(135) [~~(132)~~] SSA--Social Security Administration.

(136) [~~(133)~~] SSI--Supplemental Security Income.

(137) [~~(134)~~] Staff person--A full-time or part-time employee of a program provider, other than a service provider.

(138) [~~(135)~~] State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(139) [~~(136)~~] Support consultation--A DBMD Program service that is defined in 40 TAC §41.103 and may be provided an individual who chooses to participate in the CDS option.

(140) [~~(137)~~] Supported employment--A DBMD Program service that provides assistance to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(141) [~~(138)~~] System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(142) [~~(139)~~] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas State Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(143) [~~(140)~~] TAS--Transition Assistance Services. A DBMD Program service provided in accordance with Chapter 272 of this title (relating to Transition Assistance Services) to an individual who is receiving institutional services and is eligible for and enrolling into the DBMD Program.

(144) [~~(141)~~] Texas Workforce Commission--The state agency established under Texas Labor Code Chapter 301.

(145) [~~(142)~~] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(146) [~~(143)~~] TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(147) [~~(144)~~] Transfer--The movement of an individual from a DBMD Program provider or a FMSA to a different DBMD Program provider or FMSA.

(148) [~~(145)~~] Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.

(149) [~~(146)~~] Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(150) [~~(147)~~] Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(151) [~~(148)~~] Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

§260.7. Description of the DBMD Program and CFC.

(a) The DBMD Program is a Medicaid waiver program approved by CMS and operated by HHSC pursuant to §1915(c) of the

Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program. DBMD Program services are intended to:

(1) enhance the individual's integration into the community;

(2) maintain or improve the individual's independent functioning, and

(3) prevent the individual's admission to an institution.

(b) HHSC limits the enrollment in the DBMD Program to the number of individuals approved by CMS and funded by the State of Texas.

(c) The DBMD Program offers the following services approved by CMS:

(1) adaptive aids;

(2) residential assistance, provided as:

(A) licensed assisted living; or

(B) licensed home health assisted living;

(3) behavioral support;

(4) case management;

(5) chore services;

(6) day habilitation;

(7) dental treatment;

(8) dietary services;

(9) employment assistance;

(10) employment readiness;

(11) [~~(10)~~] intervener services;

(12) [~~(11)~~] minor home modifications;

(13) [~~(12)~~] nursing;

(14) [~~(13)~~] occupational therapy;

(15) [~~(14)~~] orientation and mobility;

(16) [~~(15)~~] physical therapy;

(17) [~~(16)~~] residential habilitation;

(18) [~~(17)~~] respite, provided as:

(A) in-home respite; or

(B) out-of-home respite;

(19) [~~(18)~~] speech-language pathology;

(20) [~~(19)~~] audiology;

(21) [~~(20)~~] supported employment;

(22) [~~(21)~~] TAS; and

(23) [~~(22)~~] if the individual's IPC includes at least one DBMD Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(d) A program provider may only provide and bill for residential habilitation if the activity provided is transportation, as described in §260.343(b)(1)(A)(ii)(I) of this chapter (relating to Day Habilitation, Residential Habilitation, and CFC PAS/HAB).

(e) CFC is a state plan option governed by CFR, Title 42, Part 441, Subpart K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to an individual:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

(f) A program provider with a contract enrollment date on or after September 1, 2009, must serve all counties within an HHSC region.

(g) A program provider with a contract enrollment date before September 1, 2009, may continue to serve only the counties specified in its contract. If such a program provider chooses to provide services in additional counties, the program provider does not have to serve all the counties within the HHSC region.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-2910

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

26 TAC §260.59

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§260.59. Requirements for Home and Community-Based Settings.

(a) A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.

(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:

(A) seek employment and work in a competitive integrated setting;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community.

(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which licensed assisted living is provided. The setting options are identified and documented in an individual's IPP and are based on the individual's needs, preferences, and, for settings in which licensed assisted living is provided, resources available for room and board.

(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

(5) The setting facilitates individual choice regarding services and supports and the service providers who provide the services and supports.

(b) Except as provided in subsection (c) of this section, a program provider must ensure that DBMD Program services and CFC services are not provided in a setting that is presumed to have the qualities of an institution. A setting is presumed to have the qualities of an institution if the setting:

(1) is located in a building in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID;

(2) is located in a building on the grounds of, or immediately adjacent to, a certified ICF/IID operated by a LIDDA or state supported living center;

(3) is located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution;

(4) is located in a building on the grounds of, or immediately adjacent to, a hospital, a nursing facility, or other institution except for a licensed private ICF/IID; or

(5) has the effect of isolating individuals from the broader community of persons not receiving Medicaid HCBS.

(c) A program provider may provide a DBMD Program service or a CFC service to an individual in a setting that is presumed to have the qualities of an institution as described in subsection (b) of this section, if CMS determines through a heightened scrutiny review that the setting:

(1) does not have the qualities of an institution; and

(2) does have the qualities of home and community-based settings.

(d) A program provider must ensure that employment readiness is not provided in the residence of an individual or another person.

(e) In addition to the requirements in subsection (a) of this section, a program provider must ensure that an employment readiness location:

(1) allows an individual to:

(A) control the individual's schedule and activities;

(B) have access to the individual's food at any time; and

(C) have visitors of the individual's choosing at any time; and

(2) is physically accessible and free of hazards to an individual.

(f) If an individual's service planning team determines that the requirements in subsection (e)(1)(A) and (B) of this section must be modified, the service planning team must:

(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and

(2) document on the individual's IPP:

(A) a description of the specific and individualized assessed need that justifies the modification;

(B) a description of any positive interventions and supports that have been tried but did not work;

(C) a description of any less intrusive methods of meeting the need that have been tried but did not work;

(D) a description of the condition that is directly proportionate to the specific assessed need;

(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;

(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(G) the individual's or LAR's signature evidencing informed consent to the modification; and

(H) the program provider's assurance that the modification will cause the individual no harm.

(g) After the service planning team updates the IPP as required by subsection (f) of this section, the program provider must implement the modifications.

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
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 438-2910

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SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

26 TAC §260.203, §260.205

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendments implement Texas Human Resources Code §32.0755.

§260.203. Qualifications of Program Provider Staff.

(a) A program provider must employ a program director who is responsible for the program provider's day-to-day operations. The program director must:

(1) have a minimum of one year of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities and have a master's degree in a health and human services related field;

(2) have a minimum of two years of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities, and have a bachelor's degree in a health and human services related field; or

(3) have been a program director for the DBMD Program provider on or before June 15, 2010.

(b) A program provider must ensure that a case manager:

(1) has:

(A) a bachelor's degree in a health and human services related field and a minimum of two years of experience in the delivery of direct services to individuals with disabilities;

(B) an associate degree in a health and human services related field and a minimum of four years of experience providing direct services to individuals with disabilities; or

(C) a high school diploma or certificate recognized by a state as the equivalent of a high school diploma and a minimum of six years of experience providing direct services to individuals with disabilities; and

(2) either:

(A) is fluent in the individual's preferred communication methods (American sign language, tactile symbols, communication boards, pictures, or gestures); or

(B) within six months after being assigned to an individual, becomes fluent in the individual's communication methods.

(c) For purposes of subsection (d) of this section and consistent with Texas Government Code §531.0973, "deafblind-related course work" means educational courses designed to improve a person's:

(1) knowledge of deafblindness and its effect on learning;

(2) knowledge of the role of intervention and ability to facilitate the intervention process;

(3) knowledge of areas of communication relevant to deafblindness, including methods, adaptations, and use of assistive technology, and ability to facilitate the development and use of communication skills for a person with deafblindness;

(4) knowledge of the effect that deafblindness has on a person's psychological, social, and emotional development and ability to facilitate the emotional well-being of a person with deafblindness;

(5) knowledge of and issues related to sensory systems and ability to facilitate the use of the senses;

(6) knowledge of motor skills, movement, orientation, and mobility strategies and ability to facilitate orientation and mobility skills;

(7) knowledge of the effect that additional disabilities have on a person with deafblindness and the ability to provide appropriate support; or

(8) professionalism and knowledge of ethical issues relevant to the role of an intervener.

(d) A program provider must ensure that:

(1) an intervener:

(A) is at least 18 years of age;

(B) is not:

(i) the spouse of the individual to whom the intervener is assigned; or

(ii) if the individual is under 18 years of age, a parent of the individual to whom the intervener is assigned;

(C) holds a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;

(D) has at least two years of experience working with individuals with developmental disabilities; and

(E) has the ability to proficiently communicate in the functional language of the individual to whom the intervener is assigned;

(2) an intervener I:

(A) meets the requirements for an intervener described in paragraph (1) of this subsection;

(B) has at least six months of experience working with persons who have deafblindness or function as persons with deafblindness;

(C) completed at least eight semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and

(D) has completed a practicum that is at least one semester credit hour in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education;

(3) an intervener II:

(A) meets the requirements for an intervener I described in paragraph (2) of this subsection;

(B) has at least nine months of experience working with persons who have deafblindness or function as persons with deafblindness; and

(C) has completed at least an additional 10 semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and:

(4) an intervener III:

(A) meets the requirements for an intervener II described in paragraph (3)(A) of this subsection;

(B) has at least one year of experience working with persons with deafblindness or function as persons with deafblindness; and

(C) holds an associate degree or bachelor's degree in a course of study with a focus on deafblind-related course work from a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education.

(e) A program provider must ensure that a service provider who interacts directly with an individual is able to communicate with the individual.

(f) A program provider must ensure that a service provider of a therapy described in §260.355(a) of this chapter (relating to Therapies) is licensed by the State of Texas as described in §260.355(b) of this chapter.

(g) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is under 18 years of age; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field with six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate degree in rehabilitation, business, marketing, or a related human services field with one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, with two years of paid or unpaid experience providing services to people with disabilities.

(h) Documentation of the experience required by subsection (g) of this section must include:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(i) A program provider must ensure that a service provider of employment readiness:

(1) be at least 18 years of age;

(2) is not:

(A) the parent of the individual if the individual is under 18 years of age; or

(B) the spouse of the individual; and

(3) has:

(A) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; and

(B) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(i) a written competency-based assessment of the ability to document service delivery and observations of individuals receiving services; and

(ii) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals receiving services.

(j) [~~(i)~~] A program provider must ensure that dental treatment is provided by a person licensed to practice dentistry or dental hygiene in accordance with Texas Occupations Code Chapter 256.

(k) [~~(j)~~] A program provider must ensure that a service provider not required to meet the other education or experience requirements described in this section:

(1) is 18 years of age or older;

(2) has:

(A) a high school diploma;

(B) a certificate recognized by a state as the equivalent of a high school diploma; or

(C) the following:

(i) documentation of a proficiency evaluation of experience and competence to perform job tasks including an ability to provide the required services needed by the individual as demonstrated through a written competency-based assessment; and

(ii) at least three personal references from persons not related by blood that evidence the person's ability to provide a safe and healthy environment for the individual; and

(3) except for a service provider of chore services, either:

(A) is fluent in the communication method preferred by the individual to whom the service provider is assigned, including

American sign language, tactile symbols, communication boards, pictures, and gestures; or

(B) has the ability to become fluent in the communication methods used by an individual within three months after being assigned to the individual.

(l) [~~(k)~~] A program provider must ensure that:

(1) a vehicle in which a service provider transports an individual has a valid Vehicle Identification Certificate of Inspection, in accordance with state law; and

(2) a service provider who transports an individual in a vehicle has:

(A) a current Texas driver's license; and

(B) vehicle liability insurance, in accordance with state law.

(m) [~~(l)~~] A service provider:

(1) must not be a parent of the individual to whom the service provider is providing any service, if the individual is under 18 years of age;

(2) must not be the spouse of the individual to whom the service provider is providing any service;

(3) must not be a relative or guardian of the individual to whom the service provider is providing an adaptive aid; and

(4) must not be a relative or guardian of the individual to whom the service provider is providing any of the following services, if the individual is 18 years of age or older:

(A) assisted living;

(B) case management;

(C) behavioral support;

(D) dental treatment;

(E) dietary services;

(F) FMS, if the individual is participating in the CDS option;

(G) occupational therapy;

(H) orientation and mobility;

(I) physical therapy;

(J) speech and language pathology;

(K) audiology; and

(L) support consultation, if the individual is participating in the CDS option.

(n) [~~(m)~~] A service provider of CFC PAS/HAB must:

(1) have:

(A) a high school diploma;

(B) a certificate recognized by a state as the equivalent of a high school diploma; or

(C) both of the following:

(i) a successfully completed written competency-based assessment demonstrating the service provider's ability to perform CFC PAS/HAB tasks, including an ability to perform CFC PAS/HAB tasks required for the individual to whom the service provider will provide CFC PAS/HAB; and

(ii) at least three written personal references from persons not related by blood that evidence the service provider's ability to provide a safe and healthy environment for the individual; and

(2) meet any other qualifications requested by the individual or LAR based on the individual's needs and preferences.

(o) [~~(n)~~] The program provider must maintain documentation in a service provider's employment, contract, or personal service agreement file that the service provider meets the requirements of this section.

§260.205. Training.

(a) General orientation training. A program provider must ensure that a program director and a service provider complete a general orientation curriculum before assuming job duties and annually thereafter.

(1) The general orientation curriculum must include training on:

(A) the rights of an individual;

(B) confidentiality;

(C) the program provider's complaint process; and

(D) the DBMD Program and CFC, including the requirements of this chapter and the DBMD Program services and CFC services specified in §260.7 of this chapter (relating to Description of the DBMD Program and CFC).

(2) A program provider must document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted; and

(C) the name of the person who conducted the training.

(b) Abuse, neglect, and exploitation training. A program provider must:

(1) ensure that a program director, service provider, staff person, and volunteer:

(A) are trained on and knowledgeable of:

(i) acts that constitute abuse, neglect, and exploitation;

(ii) signs and symptoms of abuse, neglect, and exploitation; and

(iii) methods to prevent abuse, neglect, and exploitation;

(B) are instructed to report an allegation of abuse, neglect, or exploitation of an individual as described in §260.219 of this subchapter (relating to Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual); and

(C) are provided with the instructions, in writing, described in subparagraph (B) of this paragraph;

(2) conduct the activities described in paragraph (1) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the program director, service provider, staff person, or volunteer was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the program director, service provider, staff person, or volunteer is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted; and

(C) the name of the person who conducted the training.

(c) Cardiopulmonary resuscitation and choking prevention training. A program provider must ensure training on cardiopulmonary resuscitation and choking prevention in accordance with this subsection.

(1) A program provider must ensure that a program director, a case manager, an intervener, and a service provider of licensed assisted living, licensed home health assisted living, day habilitation, employment assistance, employment readiness, transportation provided as a residential habilitation activity, respite, supported employment, and CFC PAS/HAB have current certification in:

(A) cardiopulmonary resuscitation; and

(B) choking prevention.

(2) The training received to obtain the certification must include an in-person evaluation by a qualified instructor of the trainee's ability to perform the actions listed in paragraph (1) of this subsection.

(3) A program provider must ensure that:

(A) a program director, a case manager, an intervener, and a service provider of licensed assisted living, licensed home health assisted living, day habilitation, employment assistance, transportation provided as a residential habilitation activity, respite, employment readiness, and supported employment have the certification described in paragraph (1) of this subsection before assuming job duties; and

(B) a CFC PAS/HAB service provider has the certification described in paragraph (1) of this subsection:

(i) within 90 calendar days after the original effective date of this section, if the CFC PAS/HAB service provider was hired on or before the original effective date of this section; or

(ii) before assuming job duties, if the CFC PAS/HAB service provider is hired after the original effective date of this section.

(4) A program provider must maintain a copy of the certification required by paragraph (1) of this subsection. The certification must be issued by the organization granting the certification.

(d) HHSC DBMD Computer Based Training.

(1) A program provider must ensure that a program director and case manager complete the HHSC Deaf Blind with Multiple Disabilities Waiver Computer Based Training and receive a score of at least 80 percent on the examination included in the training:

(A) within 90 days after October 1, 2019, and annually thereafter, if the program director or case manager was hired before October 1, 2019; or

(B) within 90 days after assuming job duties and annually thereafter, if the program director or case manager is hired on or after October 1, 2019.

(2) A program provider must maintain a copy of the certification from the training required by this subsection, issued by HHSC, showing that the person successfully completed the training.

(e) DBMD Program Case Management Training.

(1) A program provider must ensure that a program director and case manager complete, within six months after assuming job duties, the DBMD Program Case Management Training provided by HHSC or training developed by the program provider. A program provider that develops and conducts its own training must ensure that:

(A) the training addresses the following elements from the HHSC DBMD Program Case Management Training:

(i) the DBMD Program service delivery model, which includes:

(I) the role of the case manager and DBMD Program provider;

(II) the role of the service planning team;

(III) person-centered planning; and

(IV) the CDS option;

(ii) DBMD Program services, including how these services:

(I) complement other Medicaid services;

(II) supplement family supports and non-waiver services available in the individual's community; and

(III) prevent admission to an institution;

(iii) DBMD Program process and procedures for:

(I) eligibility and enrollment;

(II) service planning, service authorization, and program plans;

(III) access to non-waiver resources; and

(IV) complaint procedures and the fair hearing process; and

(iv) rules, policies, and procedures about:

(I) prevention of abuse, neglect, and exploitation of an individual;

(II) reporting abuse, neglect, and exploitation to local and state authorities; and

(III) financial improprieties involving an individual; and

(B) the staff person who develops and conducts the training successfully completes the DBMD Program Case Management Training provided by HHSC before developing or conducting training.

(2) A program provider must:

(A) for the training required by this subsection that is provided by HHSC, maintain a copy of the certificate issued by HHSC that the person completed the training; or

(B) for the training required by this subsection that is developed and conducted by the program provider, maintain a copy of a certificate or form letter issued by the program provider that includes:

(i) the name of the person who received the training;

(ii) the date the training was conducted; and

(iii) the name of the person conducting the training.

(f) DBMD Program Service Provider Training.

(1) A program provider must ensure that:

(A) a case manager, within six months after assuming job duties, completes the DBMD Program Service Provider Training as described in paragraph (2) of this subsection;

(B) a program director, if providing intervener services, licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, nursing, specialized nursing, transportation provided as a residential habilitation activity, respite, supported employment, employment readiness, or CFC PAS/HAB to an individual, completes, within six months after assuming job duties, the DBMD Program Service Provider Training as described in paragraph (2) of this subsection;

(C) an intervener and a service provider of licensed assisted living, licensed home health assisted living, day habilitation, employment assistance, employment readiness, nursing, specialized nursing, transportation provided as a residential habilitation activity, respite, or supported employment, within 90 calendar days after assuming job duties, complete the DBMD Program Service Provider Training described in paragraph (2) of this subsection; and

(D) a CFC PAS/HAB service provider completes the DBMD Program Service Provider Training:

(i) within 90 days after the original effective date of this section, if the CFC PAS/HAB service provider was hired on or before the original effective date of this section; or

(ii) within 90 calendar days after assuming job duties, if the CFC PAS/HAB service provider is hired after the original effective date of this section.

(2) The DBMD Program Service Provider Training is provided by HHSC or developed by a program provider. If the training is developed by the program provider, the training must address the following elements from the HHSC DBMD Program Service Provider Training curriculum:

(A) methods and strategies for communication;

(B) active participation in home and community life;

(C) orientation and mobility;

(D) behavior as communication;

(E) causes and origins of deafblindness; and

(F) vision, hearing, and the functional implications of deafblindness.

(3) A program provider that develops and conducts its own training, as described in paragraph (2) of this subsection, must ensure that the staff person who develops and conducts the training successfully completes the DBMD Program Service Provider Training provided by HHSC before developing or conducting training.

(4) A program provider must:

(A) for the training required by this subsection that is provided by HHSC, maintain a copy of the certificate issued by HHSC that the person completed the training; or

(B) for the training required by this subsection that is developed and conducted by the program provider, maintain a copy of a certificate or form letter issued by the program provider that includes:

(i) the name of the person who received the training;

(ii) the date the training was conducted; and

(iii) the name of the person conducting the training.

(g) Training on needs of an individual.

(1) Except as provided in paragraph (3) of this subsection, a program provider must ensure an intervener and a service provider of licensed assisted living, licensed home health assisted living, day habilitation, employment assistance, transportation provided as a residential habilitation activity, respite, supported employment, employment readiness, and CFC PAS/HAB, complete training on the needs of an individual:

(A) before providing services to the individual;

(B) at least annually; and

(C) if the individual's needs change.

(2) Training on the needs of an individual must include:

(A) the special needs of the individual, including the individual's:

(i) methods of communication;

(ii) specific visual and audiological loss; and

(iii) adaptive aids;

(B) managing challenging behavior, including training in:

(i) prevention of aggressive behavior; and

(ii) de-escalation techniques; and

(C) instruction in the individual's home with full participation by the individual, LAR, or other actively involved person, as appropriate, concerning the specific tasks to be performed.

(3) A program provider must ensure that a CFC PAS/HAB service provider hired before the original effective date of this section receives the training required by this subsection within 90 days after the original effective date of this section, annually thereafter, and if the individual's needs change.

(4) A program provider must document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted;

(C) the name of the individual;

(D) the topic of the training; and

(E) the name of the person who conducted the training.

(h) Training on delegated tasks.

(1) A program provider must ensure a service provider performing a delegated task is:

(A) trained to perform the delegated task in accordance with state law and rules:

(i) before providing services to an individual;

(ii) annually thereafter; and

(iii) if the individual's needs change; and

(B) supervised by a physician or nurse in accordance with state law and rules.

(2) A program provider must document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted;

(C) the name of the individual;

(D) the topic of the training; and

(E) the name of the person who conducted the training.

(i) Person-centered planning training.

(1) A program provider must ensure that:

(A) a case manager completes a comprehensive non-introductory person-centered planning training developed or approved by HHSC within six months after the case manager's date of hire; and

(B) a service provider whose duties include participating as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

(2) A program provider must maintain documentation that includes:

(A) for the training described in paragraph (1)(A) of this subsection:

(i) the name of the case manager who received the training;

(ii) the date the training was conducted; and

(iii) the name of the person or organization that conducted the training; and

(B) for the training described in paragraph (1)(B) of this subsection:

(i) the name of the service provider who completed the training; and

(ii) the date the service provider completed the training.

(j) Training requested for a CFC PAS/HAB service provider. If requested by an individual or LAR, a program provider must:

(1) allow the individual or LAR to:

(A) train a CFC PAS/HAB service provider in the specific assistance needed by the individual; and

(B) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC so the service provider meets any additional qualifications desired by the individual or LAR.

(k) Training on protective devices. A program provider must ensure compliance with the training and training documentation requirements described in §260.215(c)(8) and (9) of this subchapter (relating to Protective Devices).

(l) Training on restraints. A program provider must ensure compliance with the training and documentation requirements described in §260.217(d)(3) of this subchapter (relating to Restraints).

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 July 18, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 438-2910

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SUBCHAPTER F. SERVICE DESCRIPTIONS AND REQUIREMENTS
DIVISION 3. REQUIREMENTS FOR OTHER DBMD PROGRAM SERVICES

26 TAC §260.341

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§260.341. Employment Services.

(a) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment meets the qualifications described in §260.203(g) of this chapter (relating to Qualifications of Program Provider Staff).

(b) Before including employment assistance on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(c) A program provider must ensure that employment assistance:

(1) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and available on the HHSC website;

(3) is not provided to an individual with the individual present at the same time that one of the following services is provided:

(A) day habilitation;

(B) transportation provided as a residential habilitation activity;

(C) supported employment;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include using Medicaid funds paid by HHSC to a program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

(d) Before including supported employment on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(e) A program provider must ensure that supported employment:

(1) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and available on the HHSC website;

(3) is not provided to an individual with the individual present at the same time that one of the following services are provided:

(A) day habilitation;

(B) transportation provided as a residential habilitation activity;

(C) employment assistance;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by HHSC to a program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

(f) Employment readiness:

(1) is assistance that prepares an individual to participate in employment;

(2) provides the following person-centered activities:

(A) teaching generalized habilitative skills necessary to prepare an individual to participate in employment;

(B) training in the use of adaptive equipment necessary to obtain and retain employment skills; and

(C) achieving generalized vocational goals consistent with the outcomes identified in an individual's IPC;

(3) is not job task-oriented;

(4) includes activities for which an individual is compensated in accordance with applicable laws and regulations;

(5) provides personal assistance for an individual who cannot manage personal care needs during employment readiness activities; and

(6) includes:

(A) transportation between an individual's place of residence and an employment readiness location;

(B) transportation from one employment readiness location to another employment readiness location; and

(C) securing transportation as described in subparagraph (A) or (B) of this paragraph.

(g) A program provider may provide employment readiness to an individual only if the individual's service planning team does not expect the individual to be competitively employed within one year after the date employment readiness begins.

(h) A program provider may not provide employment readiness to an individual who is:

(1) receiving supported employment; or

(2) engaged in competitive employment.

(i) Before employment readiness is included on an individual's enrollment IPC, renewal IPC, or revised IPC, a program provider must ensure:

(1) an HHS Employment First Discovery Tool is completed in accordance with §284.105 of this title (relating to Uniform Process) and supports the provision of employment readiness to the individual; and

(2) documentation is maintained in the individual's record that employment readiness is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-2910

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DIVISION 4. NON-BILLABLE TIME AND ACTIVITIES

26 TAC §260.357

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§260.357. Non-Billable Time and Activities.

A program provider must not bill for and HHSC does not reimburse for:

(1) services provided to an individual before HHSC's approval of the individual's request for enrollment in the DBMD Program;

(2) supervision of service providers unless providing delegated tasks;

(3) phone calls, text messages, emails, letters, or meetings with HHSC or community resources that do not directly address an individual's services;

(4) administrative meetings or staff meetings;

(5) in-service training, general training, continuing education, or conferences;

(6) employee conferences or evaluations;

(7) filing claims for services;

(8) traveling to and from an individual's residence, except when a service provider of day habilitation, employment readiness, transportation provided as a residential habilitation activity, or in-home respite [~~service provider~~] is transporting the individual;

(9) processing paperwork or completing records or reports;

(10) services not included on an approved IPC;

(11) services that are mutually exclusive;

(12) other services and activities not authorized, permitted, or allowed under this chapter;

(13) routine care and supervision that a family member is legally obligated to provide;

(14) activities or supervision for which a payment is made by a source other than Medicaid;

(15) room and board;

(16) any expense related to providing transportation provided as a residential habilitation activity, nursing, out-of-home respite in a camp, case management, adaptive aids, intervener services, or CFC PAS/HAB outside the program provider's contracted service delivery area, including costs for transportation or lodging;

(17) transportation provided as a residential habilitation activity, nursing, out-of-home respite in a camp, case management, adaptive aids, intervener services, or CFC PAS/HAB provided to an individual outside the program provider's contracted service delivery area if the individual has received services outside the program provider's contracted service delivery during a period of more than 60 consecutive days;

(18) two or more services provided at the same time by the same service provider; or

(19) an item or service provided to an individual at the request of the individual or LAR that is not a reimbursable item in the DBMD 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.

Filed with the Office of the Secretary of State on July 18, 2024.

TRD-202403185
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 438-2910

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CHAPTER 262. TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §262.3, concerning Definitions; §262.5, concerning Description

of TxHmL Program Services; §262.103, Process for Enrollment of Applicants; §262.202, concerning Requirements for Home and Community-Based Settings; §262.301, concerning IPC Requirements; §262.304, concerning Service Limits; §262.401, concerning Program Provider Reimbursement; and §262.701, concerning LIDDA Requirements for Providing Service Coordination in the TxHmL Program.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement Texas Human Resources Code §32.0755, added by House Bill 4169, 88th Legislature, Regular Session, 2023. The proposed amendments implement a service similar to prevocational services named employment readiness, in the TxHmL Program, one of HHSC's §1915(c) Medicaid waiver programs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §262.3 adds and defines the terms "group setting" in new paragraph (25) and the term "job task-oriented" in new paragraph (48) because these new terms are used in the proposed amended rules. The proposed amendment also renumbers the paragraphs in the rule.

The proposed amendment to §262.5, adds a new paragraph (21) in subsection (a), to describe employment readiness. The proposed amendment also renumbers subsection (a).

The proposed amendment to §262.103, adds employment readiness in subsection (o)(2)(A)(ii), to the array of TxHmL Program services that may require the individual's initial individual plan of care (IPC) to include a sufficient amount of registered nursing units for the program provider's registered nurse to perform a comprehensive nursing assessment.

The proposed amendment to §262.202, adds a new subsection (d)(1) and (2) to the rule. Proposed new subsection (d)(1) requires a program provider to ensure that a group setting allows an individual to control the individual's own schedule and activities, have access to the individual's food at any time, and receive visitors of the individual's choosing at any time. Proposed new subsection (d)(2) requires a program provider to ensure a group setting is physically accessible and free of hazards. The proposed amendment adds new subsections (e), (f), and (g) that outline requirements for implementing a modification to a requirement in proposed new subsection (d)(1).

The proposed amendment to §262.301 adds a new paragraph (11) in subsection (c), requiring authorization of employment readiness to be supported by an HHSC Employment First Discovery Tool and be within the service limit described in the proposed amendment to §262.304.

The proposed amendment to §262.304 adds a new paragraph (5) in subsection (a) to establish a combined service limit for employment readiness and individualized skills and socialization.

The proposed amendment to §262.401, adds employment readiness in subsection (a)(1)(A), to the array of TxHmL Program services that HHSC pays in accordance with the reimbursement rate for the service. The proposed amendment adds subsection (a)(5)(J) that states HHSC does not pay a program provider for a service or recoups any payments for employment readiness if the program provider did not ensure and maintain documentation in the individual's record that employment readiness is not available to the individual under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.). The proposed amendment also renumbers the remaining subparagraphs in paragraph (5).

The proposed amendment to §262.701 adds employment readiness in subsection (j)(6) to the array of TxHmL services that require the service coordinator to inform the individual or LAR of the consequences and risks of refusing the comprehensive nursing assessment. The proposed amendment adds a new subsection (v) which refers to proposed new §262.202(d)(1), to require a service coordinator to update an individual's person-directed plan with certain information described in paragraphs (1) - (8) if a modification to a service delivered in a group setting is needed.

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 not create a new regulation;

(6) the proposed rules will expand 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, HHSC Chief Financial Officer has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because any changes required by the programs to implement employment readiness services are included in providing contracted client services and the payment rate for providing services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the individuals in the TxHmL Program will benefit from having an additional service to provide assistance with getting ready for competitive employment and furthering their employment goals.

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 create new regulations, standards, or processes for program providers and local intellectual and developmental disability authorities to comply. The new service, employment readiness, is included in providing contracted client services and the payment rate for providing services.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist 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.

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 24R045" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §262.3, §262.5

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendments implement Texas Human Resources Code §32.0755.

§262.3. Definitions.

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

(1) Abuse--

(A) physical abuse;

(B) sexual abuse; or

(C) verbal or emotional abuse.

(2) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(3) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(4) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(5) Applicant--A Texas resident seeking services in the Texas Home Living (TxHmL) Program.

(6) Audio-only--An interactive, two-way audio communication platform that only uses sound.

(7) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(8) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(9) Calendar day--Any day, including weekends and holidays.

(10) CDS option--Consumer directed services option. A service delivery option as defined in 40 TAC §41.103 (relating to Definitions).

(11) CFC--Community First Choice.

(12) CFC ERS--CFC emergency response services.

(13) CFC FMS--The term used for financial management services on the individual plan of care (IPC) of an applicant or individual if the applicant will receive or the individual receives only CFC personal assistance services (PAS)/habilitation (HAB) through the CDS option.

(14) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant will receive or the individual receives only CFC PAS/HAB through the CDS option.

(15) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(16) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(17) Comprehensive nursing assessment--A comprehensive physical and behavioral assessment of an individual, including the individual's health history, current health status, and current health needs, that is completed by a registered nurse (RN).

(18) Contract--A provisional contract or a standard contract.

(19) Delegated nursing task--A nursing task delegated by a registered nurse to an unlicensed person in accordance with:

(A) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(20) DFPS--The Department of Family and Protective Services.

(21) DID--Determination of intellectual disability. This term has the meaning set forth in §304.102 of this title (relating to Definitions).

(22) DID report--Determination of intellectual disability report. This term has the meaning set forth in §304.102 of this title.

(23) EVV--Electronic visit verification. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).

(24) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(25) Group setting--A setting, other than an individual's residence, in which more than one individual or other person receives employment readiness, employment assistance, supported employment, or a similar service.

(26) [~~(25)~~] FMS--Financial management services.

(27) [~~(26)~~] FMSA--Financial management services agency. As defined in 40 TAC §41.103, an entity that provides FMS to an individual participating in the CDS option.

(28) [~~(27)~~] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(29) [~~(28)~~] HCS--Home and Community-based Services. Services provided through the HCS Program operated by the Texas Health and Human Services Commission (HHSC) as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(30) [~~(29)~~] Health maintenance activities--This term has the meaning set forth in 22 TAC §225.4 (relating to Definitions).

(31) [~~(30)~~] Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by a licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. This includes tasks delegated by an RN; health maintenance activities, that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(32) [~~(31)~~] HHSC--The Texas Health and Human Services Commission.

(33) [~~(32)~~] Hospital--A public or private institution licensed or exempt from licensure in accordance with Texas Health and Safety Code (THSC) Chapters 13, 241, 261, or 552.

(34) [~~(33)~~] IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(35) [~~(34)~~] ICAP--Inventory for Client and Agency Planning. An instrument designed to assess a person's needs, skills, and abilities.

(36) [~~(35)~~] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(37) [~~(36)~~] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(38) [~~(37)~~] ID/RC Assessment--Intellectual Disability/Related Conditions Program Assessment. A form used by HHSC for level of care determination and level of need assignment.

(39) [~~(38)~~] Implementation plan--A written document developed by a program provider for an individual for each TxHmL Program service, except community support, and for each CFC service, except CFC support management, on the individual's IPC to be provided by the program provider. An implementation plan includes:

(A) a list of outcomes identified in the person-directed plan that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, legally authorized representative (LAR), and the program provider.

(40) [~~(39)~~] In person or in-person--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

(41) [~~(40)~~] Individual--A person enrolled in the TxHmL Program.

(42) [~~(41)~~] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the TxHmL Program.

(43) [~~(42)~~] Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(44) [~~(43)~~] Intellectual disability--This term has the meaning set forth in §304.102 of this title.

(45) [~~(44)~~] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(46) [~~(45)~~] IPC cost--Estimated annual cost of TxHmL Program services included on an IPC.

(47) [~~(46)~~] IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(48) Job task-oriented--Focused on developing a skill related to a specific type of employment.

(49) [~~(47)~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(50) [~~(48)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(51) [~~(49)~~] LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(52) [~~(50)~~] LON--Level of need. An assignment given by HHSC to an applicant or individual that is derived from the ICAP service level score and from selected items on the ID/RC Assessment.

(53) [~~(51)~~] Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

(54) [~~(52)~~] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(55) [~~(53)~~] Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(56) [~~(54)~~] Mental health facility--A facility licensed in accordance with THSC Chapter 577, Private Mental Hospitals and Other Mental Health Facilities.

(57) [~~(55)~~] Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(58) [~~(56)~~] Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(59) [~~(57)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who voluntarily assist an individual to achieve the individual's identified goals.

(60) [~~(58)~~] Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(61) [~~(59)~~] Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(62) [~~(60)~~] PDP--Person-directed plan. A plan developed with an applicant or individual and LAR using an HHSC form that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety; and

(B) includes the setting for each service, which must be selected by the individual or LAR from setting options.

(63) [~~(61)~~] Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC §533A.035.

(64) [~~(62)~~] Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(65) [~~(63)~~] Platform--This term has the meaning set forth in Texas Government Code §531.001(4-d).

(66) [~~(64)~~] Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the Intellectual and De-

velopmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook.

(67) [~~(65)~~] Pre-move site review--A review conducted by the service coordinator in accordance with HHSC's IDD PASRR Handbook.

(68) [~~(66)~~] Professional therapies--Services that consist of the following:

(A) audiology services;

(B) behavioral support;

(C) dietary services;

(D) occupational therapy services;

(E) physical therapy services; and

(F) speech and language pathology.

(69) [~~(67)~~] Program provider--A person, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with HHSC to provide TxHmL Program services, excluding an FMSA.

(70) [~~(68)~~] Provisional contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with 40 TAC §49.208(e).

(71) [~~(69)~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(72) [~~(70)~~] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the TxHmL Program Billing Requirements.

(73) [~~(71)~~] Renewal IPC--An IPC developed for an individual in accordance with §262.302(a) of this chapter (relating to Renewal and Revision of an Individual's IPC).

(74) [~~(72)~~] Residential child care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(75) [~~(73)~~] Revised IPC--An IPC that is revised during an IPC year in accordance with §262.302 of this chapter to add a new TxHmL Program service or CFC service or change the amount of an existing service.

(76) [~~(74)~~] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(77) [~~(75)~~] Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(78) [~~(76)~~] Service coordination--A service as defined in §331.5 of this title (relating to Definitions).

(79) [~~(77)~~] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(80) [~~(78)~~] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraph (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) the service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or ICF/IID or has enrolled in the TxHmL Program as a diversion from admission to an institution, including a nursing facility or ICF/IID, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) the service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(81) [~~(79)~~] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(82) [~~(80)~~] Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(83) [~~(81)~~] Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(84) [~~(82)~~] Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(85) [~~(83)~~] Staff member--An employee or contractor of a TxHmL Program provider.

(86) [~~(84)~~] Standard contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.209 (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance 40 TAC §49.209(d).

(87) [~~(85)~~] State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(88) [~~(86)~~] Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(89) [~~(87)~~] Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(90) [~~(88)~~] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(91) [~~(89)~~] Telehealth service--This term has the meaning set forth in Texas Occupations Code §111.001.

(92) [~~(90)~~] Temporary Admission--A stay in a facility listed in §262.505(a) of this chapter (relating to Suspension of TxHmL Program Services and CFC Services) for 270 calendar days or less or, if an extension is granted in accordance with §262.505(h) of this chapter, a stay in such a facility for more than 270 calendar days.

(93) [~~(91)~~] THSC--Texas Health and Safety Code. Texas statute relating to health and safety.

(94) [~~(92)~~] Transfer IPC--An IPC that is developed in accordance with §262.501 of this chapter (relating to Process for Individual to Transfer to a Different Program Provider or FMSA) or §262.502 of this chapter (relating to Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider) when an individual transfers to another program provider or chooses a different service delivery option.

(95) [~~(93)~~] Transition plan--A written plan developed in accordance with §303.701 of this title (relating to Transition Planning for a Designated Resident) for an applicant residing in a nursing facility who is enrolling in the TxHmL Program.

(96) [~~(94)~~] Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using HHSC Individual Transportation Plan form available on the HHSC website. A transportation plan is used to document how community support will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(97) [~~(95)~~] TxHmL Program--The Texas Home Living Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act. The TxHmL Program provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(98) [~~(96)~~] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(99) [~~(97)~~] Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(100) [~~(98)~~] Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(101) [~~(99)~~] Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

§262.5. Description of TxHmL Program Services.

(a) TxHmL Program services are described in this section and in Appendix C of the TxHmL Program waiver application approved by CMS.

(1) Adaptive aids include devices, controls, or items that are necessary to address specific needs identified in an individual's service plan. Adaptive aids enable an individual to maintain or increase

the ability to perform ADLs or the ability to perceive, control, or communicate with the environment in which the individual lives.

(2) Audiology is the provision of audiology as defined in the Texas Occupations Code Chapter 401.

(3) Speech and language pathology is the provision of speech-language pathology as defined in the Texas Occupations Code Chapter 401.

(4) Occupational therapy is the provision of occupational therapy as described in the Texas Occupations Code Chapter 454.

(5) Physical therapy is the provision of physical therapy as defined in the Texas Occupations Code Chapter 453.

(6) Dietary is the provision of nutrition services as defined in the Texas Occupations Code Chapter 701.

(7) Behavioral support is the provision of specialized interventions that:

(A) assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life; and

(B) improve an individual's quality of life.

(8) Day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual. Day habilitation does not include in-home day habilitation.

(9) In-home day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in the individual's residence.

(10) Dental treatment is:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(11) Minor home modifications are physical adaptations to an individual's residence to address specific needs identified by an individual's service planning team.

(12) Licensed vocational nursing is the provision of licensed vocational nursing as defined in the Texas Occupations Code Chapter 301.

(13) Registered nursing is the provision of professional nursing as defined in the Texas Occupations Code Chapter 301.

(14) Specialized registered nursing is the provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(15) Specialized licensed vocational nursing is the provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(16) Community support provides transportation to an individual.

(17) Respite provides temporary relief for an unpaid caregiver of an individual in a location other than the individual's residence.

(18) In-home respite provides temporary relief for an unpaid caregiver of an individual in the individual's residence.

(19) Employment assistance provides assistance to help an individual locate paid employment in the community.

(20) Supported employment provides assistance, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(21) Employment readiness is assistance that prepares an individual to participate in employment. Employment readiness services are not job-task oriented.

(b) The services described in this subsection are for an individual who is receiving at least one TxHmL Program service through the CDS option.

(1) FMS is a service defined in 40 TAC §41.103 (relating to Definitions).

(2) Support consultation is a service defined in 40 TAC §41.103.

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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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

26 TAC §262.103

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§262.103. Process for Enrollment of Applicants.

(a) HHSC notifies a LIDDA, in writing, when the opportunity for enrollment in the TxHmL Program becomes available in the LIDDA's local service area and directs the LIDDA to offer enrollment to the applicant:

(1) whose interest list date, assigned in accordance with §262.102 of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by HHSC;

(2) whose name is not coded in the HHSC data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue in an amount that would allow HHSC to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, a LIDDA must offer enrollment in the TxHmL Program in writing and deliver it to the applicant or LAR by United States mail or by hand delivery.

(c) A LIDDA must offer enrollment in the TxHmL Program to an applicant described in subsection (a)(2) or (3) of this section in accordance with HHSC's procedures.

(d) A LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of enrollment in the TxHmL Program within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the TxHmL Program, the LIDDA terminates those services that are similar to services provided in the TxHmL Program; and

(2) the HHSC Deadline Notification form, which is available on the HHSC website.

(e) If an applicant or LAR responds to an offer of enrollment in the TxHmL Program, a LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports, using the HHSC Explanation of Services and Supports document which is available on the HHSC website;

(2) provide the applicant and LAR both an oral and a written explanation of all TxHmL Program services and CFC services using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website; and

(3) give the applicant or LAR the HHSC Waiver Program Verification of Freedom of Choice form, which is available on the HHSC website to document the applicant's choice between the TxHmL Program or the ICF/IID Program.

(f) A LIDDA must withdraw an offer of enrollment in the TxHmL Program made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of enrollment in the TxHmL Program;

(2) within seven calendar days after the applicant or LAR receives the HHSC Waiver Program Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not use the form to document the applicant's choice of the TxHmL Program;

(3) within 30 calendar days after the applicant or LAR receives the contact information regarding all available program providers in the LIDDA's local service area in accordance with subsection (k)(2)(A) of this section, the applicant or LAR does not document a choice of a program provider using the HHSC Documentation of Provider Choice form, which is available on the HHSC website;

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and HHSC has approved the withdrawal of the offer; or

(5) the applicant has moved out of the State of Texas.

(g) If a LIDDA withdraws an offer of enrollment in the TxHmL Program made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If an applicant is currently receiving services from a LIDDA that are funded by general revenue and the applicant declines the offer of enrollment in the TxHmL Program, the LIDDA must terminate those services that are similar to services provided in the TxHmL Program.

(i) If a LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with 40 TAC §2.46 (relating to Notification and Appeals Process).

(j) A LIDDA must retain in an applicant's record:

(1) the HHSC Waiver Program Verification of Freedom of Choice form;

(2) the HHSC Documentation of Provider Choice form;

(3) the HHSC Deadline Notification form; and

(4) any correspondence related to the offer of enrollment in the TxHmL Program.

(k) If an applicant or LAR accepts the offer of enrollment in the TxHmL Program, the LIDDA must compile and maintain information necessary to process the applicant's request for enrollment in the TxHmL Program.

(1) The LIDDA must complete an ID/RC Assessment in accordance with §262.104(a)(1) of this subchapter (relating to LOC Determination).

(A) The LIDDA must:

(i) do one of the following:

(I) conduct a DID in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability) except that the following activities must be conducted in person:

(-a-) a standardized measure of the individual's intellectual functioning using an appropriate test based on the characteristics of the individual; and

(-b-) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's adaptive behavior level; or

(II) review and endorse a DID report in accordance with §304.403 of this title (relating to Review and Endorsement of a Determination of Intellectual Disability Report); and

(ii) determine whether the applicant has been diagnosed by a licensed physician as having a related condition.

(B) The LIDDA must:

(i) conduct an ICAP assessment in person; and

(ii) recommend an LON assignment to HHSC in accordance with §262.105 of this subchapter (relating to LON Assignment).

(C) The LIDDA must enter the information from the completed ID/RC Assessment in the HHSC data system and electronically submit the information to HHSC in accordance with §262.104(a)(2) of this subchapter and §262.105(a) of this subchapter and submit supporting documentation as required by §262.106 of this subchapter (relating to HHSC Review of LON).

(2) The LIDDA must:

(A) provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area;

(B) arrange for meetings or visits with potential program providers as requested by the applicant or the LAR; and

(C) ensure that the applicant's or LAR's choice of a program provider is documented on the HHSC Documentation of Provider Choice form and that the form is signed by the applicant or LAR and retained by the LIDDA in the applicant's record.

(3) The LIDDA must assign a service coordinator who, together with other members of the service planning team, must:

(A) develop a PDP; and

(B) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form, which is available on the HHSC website, to determine the number of CFC PAS/HAB hours the applicant needs.

(4) The CFC PAS/HAB assessment form required by paragraph (3)(B) of this subsection must be completed in person with the individual unless the following conditions are met, in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(l) A service coordinator must:

(1) in accordance with 40 TAC Chapter 41, Subchapter D (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the applicant or LAR of the applicant's right to participate in the CDS option; and

(B) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in 40 TAC §41.108 (relating to Services Available Through the CDS Option); and

(2) if the applicant or LAR chooses to participate in the CDS option, comply with §262.701(r) of this chapter (relating to LIDDA Requirements for Providing Service Coordination in the TxHmL Program).

(m) The service coordinator must develop an initial IPC with the applicant or LAR based on the PDP and in accordance with §262.301 of this chapter (relating to IPC Requirements).

(n) If an applicant or LAR chooses to receive a TxHmL Program service or CFC service provided by a program provider, the service coordinator must review the initial IPC with potential program providers as requested by the applicant or the LAR.

(o) A service coordinator must:

(1) ensure that the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment, unless:

(A) nursing services are not on the initial IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on the HHSC Nursing Task Screening Tool form; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician;

(2) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the initial IPC for the program provider's RN to perform a comprehensive nursing assessment as required by paragraph (1) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, employment readiness, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB from the program provider, will result in the applicant not receiving the service unless:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the initial IPC for a comprehensive nursing assessment by the program provider's RN in the applicant's record;

(3) negotiate and finalize the initial IPC and the date services will begin with the selected program provider, consulting with HHSC if necessary to reach agreement with the selected program provider on the content of the initial IPC and the date services will begin;

(4) ensure that the applicant or LAR signs and dates the initial IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(5) ensure that the selected program provider signs and dates the initial IPC, demonstrating agreement that the services will be provided to the applicant; and

(6) sign and date the initial IPC to demonstrate that the service coordinator agrees that the requirements described in §262.301(c) of this chapter have been met.

(p) A service coordinator must:

(1) provide an oral and written explanation to the applicant or LAR of the following information using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website:

(A) the eligibility requirements for TxHmL Program services as described in §262.101(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §262.101(b) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §262.101(c) of this subchapter to applicants who receive MAO Medicaid; and

(2) provide an oral and written explanation to the applicant or LAR of:

(A) the reasons TxHmL Program services may be terminated as described in §262.507 of this chapter (relating to Termination of TxHmL Program Services and CFC Services with Advance Notice) and §262.508 of this chapter (relating to Termination of TxHmL Program Services and CFC Services without Advance Notice); and

(B) if the applicant's PDP includes CFC services, the reasons CFC services may be terminated as described in §262.507 and §262.508 of this chapter.

(q) After an initial IPC is finalized and signed in accordance with subsection (o) of this section, the LIDDA must:

(1) enter the information from the initial IPC in the HHSC data system and electronically submit the information to HHSC;

(2) keep the original initial IPC in the individual's record;

(3) ensure the information from the initial IPC entered in the HHSC data system and electronically submitted to HHSC contains information identical to the information on the initial IPC; and

(4) submit other required enrollment information to HHSC;

(r) HHSC notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. If the enrollment is approved, HHSC authorizes the applicant's enrollment in the TxHmL Program through the HHSC data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the TxHmL Program.

(s) The selected program provider and the individual or LAR must develop:

(1) an implementation plan for:

(A) TxHmL Program services, except for community support, that is based on the individual's PDP and initial IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if community support is included on the PDP.

(t) Before the applicant's service begin date, a LIDDA must provide to the selected program provider and FMSA, if applicable:

(1) copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations;

(2) the completed ID/RC Assessment;

(3) the IPC;

(4) the applicant's PDP; and

(5) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(u) In accordance with §262.401(a)(5)(N) of this chapter (relating to Program Provider Reimbursement), if a selected program provider provides services before the date of an applicant's enrollment into the TxHmL Program, HHSC does not pay the program provider for the services.

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

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Karen Ray
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SUBCHAPTER C. PERSON-CENTERED PLANNING AND SERVICE SETTINGS

26 TAC §262.202

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§262.202. Requirements for Home and Community-Based Settings.

(a) A home and community-based setting is a setting in which an individual receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.

(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not

enrolled in a Medicaid waiver program, including opportunities for the individual to:

(A) seek employment and work in a competitive integrated setting;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community.

(2) The setting is selected by the individual from among setting options, including non-disability specific settings. The setting options are identified and documented in the PDP and are based on the individual's needs and preferences.

(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

(5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports.

(b) Except as provided in subsection (c) of this section, a program provider must ensure that TxHmL Program services and CFC services are not provided in a setting that is presumed to have the qualities of an institution. A setting is presumed to have the qualities of an institution if the setting:

(1) is located in a building in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID;

(2) is located in a building on the grounds of, or immediately adjacent to, a certified ICF/IID operated by a LIDDA or state supported living center;

(3) is located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution;

(4) is located in a building on the grounds of, or immediately adjacent to, a hospital, a nursing facility, or other institution except for a licensed private ICF/IID; or

(5) has the effect of isolating individuals from the broader community of persons not receiving Medicaid HCBS.

(c) A program provider may provide a TxHmL Program service or a CFC service to an individual in a setting that is presumed to have the qualities of an institution as described in subsection (b) of this section, if CMS determines through a heightened scrutiny review that the setting:

(1) does not have the qualities of an institution; and

(2) does have the qualities of home and community-based settings.

(d) In addition to the requirements in subsection (a) of this section, a program provider must ensure that a group setting:

(1) allows an individual to:

(A) control the individual's schedule and activities;

(B) have access to the individual's food at any time; and

(C) receive visitors of the individual's choosing at any time; and

(2) is physically accessible and free of hazards to an individual.

(e) If a program provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the program provider must:

(1) notify the service coordinator of the needed modification; and

(2) provide the service coordinator with the information described in §262.701(v) of this chapter relating to (LIDDA Requirements for Providing Service Coordination in the TxHmL Program) as requested by the service coordinator.

(f) If a service coordinator receives a notification as described in subsection (e) of this section, the service coordinator must convene a service planning team meeting to update the PDP as described §262.701(v) of this chapter.

(g) after the service planning team updates the PDP as required by subsection (f) of this section, the program provider may implement the modifications.

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. DEVELOPMENT AND REVIEW OF AN IPC

26 TAC §262.301, §262.304

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendments implement Texas Human Resources Code §32.0755.

§262.301. IPC Requirements.

(a) An IPC must be based on the PDP and specify:

(1) the type and amount of each TxHmL Program service and CFC service to be provided to the individual during an IPC year;

(2) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services during an IPC year, including natural supports, medical services, day activity, and educational services;

(3) if an individual will receive CFC support management; and

(4) if there are any TxHmL Program services or CFC services identified on the PDP as critical, requiring a service backup plan.

(b) If an applicant's or individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, a service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the applicant or individual will receive support consultation, CFC support consultation instead of support consultation.

(c) The type and amount of each TxHmL Program service and CFC service in an IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on HHSC's approved list in the TxHmL Program Billing Requirements; and

(B) be within the service limit described in §262.304 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing $500 or more, must be supported by a written assessment from a licensed professional specified by HHSC in the TxHmL Program Billing Requirements;

(8) if a minor home modification costing $1,000 or more, must be supported by a written assessment from a licensed professional specified by HHSC in the TxHmL Program Billing Requirements;

(9) if dental treatment, must be within the service limit described in §262.304 of this subchapter; [~~and~~]

(10) if CFC PAS/HAB, must be supported by the HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and[.]

(11) if employment readiness, must be:

(A) supported by a an HHSC Employment First Discovery Tool that is completed in accordance with §284.105 of this title (relating to Uniform Process); and

(B) within the service limit described in §262.304 of this subchapter.

§262.304. Service Limits.

(a) The following limits apply to an individual's TxHmL Program services:

(1) for adaptive aids, $10,000 during an IPC year;

(2) for dental treatment, $1,000 during an IPC year;

(3) for minor home modifications:

(A) $7,500 during the time the individual is enrolled in the TxHmL Program, which may be paid in one or more IPC years; [~~and~~]

(B) a maximum of $300 for repair and maintenance during the IPC year; and

(4) for day habilitation and in-home day habilitation combined, 260 units during an IPC year; and[.]

(5) for employment readiness and individualized skills and socialization combined:

(A) 1560 hours during an IPC year;

(B) six hours per calendar day; and

(C) five days per calendar week.

(b) A program provider may request, in accordance with the TxHmL Program Billing Requirements, authorization of a requisition fee:

(1) for an adaptive aid that is in addition to the $10,000 service limit described in subsection (a)(1) of this section;

(2) for dental treatment that is in addition to the $1,000 service limit described in subsection (a)(2) of this section; or

(3) for a minor home modification that is in addition to the $7,500 service limit described in subsection (a)(3)(A) of this section.

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SUBCHAPTER E. REIMBURSEMENT BY HHSC

26 TAC §262.401

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing

prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§262.401. Program Provider Reimbursement.

(a) Program provider reimbursement.

(1) HHSC pays a program provider for services as described in this paragraph.

(A) HHSC pays for community support, nursing, in-home respite, respite, employment readiness, day habilitation, in-home day habilitation, employment assistance, supported employment, professional therapies, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) HHSC pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item or service and, if requested, a requisition fee in accordance with the TxHmL Program Billing Requirements available on the HHSC website.

(C) HHSC pays for CFC ERS based on the actual cost of the service not to exceed the reimbursement rate ceiling for CFC ERS.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in 40 TAC §49.311 (relating to Claims Payment) and the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers.

(3) If an individual's TxHmL Program services or CFC services are suspended or terminated, a program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may submit a claim for a service provided on the first calendar day of the suspension or termination.

(4) If a program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by HHSC in the TxHmL Program Billing Requirements and other documentation as required by the TxHmL Program Billing Requirements.

(5) HHSC does not pay a program provider for a service or recoups any payments made to the program provider for a service if:

(A) the individual receiving the service was, at the time the service was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) the service was not included on the signed and dated IPC of the individual in effect at the time the service was provided;

(C) the service was not provided in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) the service was not documented in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(E) the program provider did not comply with 40 TAC §49.305 (relating to Records);

(F) the claim for the service was not prepared and submitted in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements Guidelines for HCS and TxHmL Program Providers;

(G) the program provider did not have the documentation described in subsection (a)(4) of this section;

(H) before including employment assistance on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment assistance was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §701 et seq.) or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) before including supported employment on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that supported employment was not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(J) employment readiness, if before including the employment readiness on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment readiness was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(K) [~~(J)~~] HHSC determines that the service would have been paid for by a source other than the TxHmL Program;

(L) [~~(K)~~] the service was provided by a service provider who did not meet the qualifications to provide the service as described in the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(M) [~~(L)~~] the service was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §262.301 of this subchapter (relating to IPC Requirements);

(N) [~~(M)~~] the service was not provided in accordance with the PDP or the implementation plan;

(O) [~~(N)~~] the service was provided before the individual's date of enrollment into the TxHmL Program;

(P) [~~(O)~~] for community support, the service was not provided in accordance with a transportation plan and §262.5(a)(16) of this chapter (relating to Description of TxHmL Program Services);

(Q) [~~(P)~~] the service was not provided; or

(R) [~~(Q)~~] for CFC PAS/HAB, in-home day habilitation, and in-home respite, if the service claim for the service did not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval).

(6) A program provider must refund to HHSC any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from HHSC, whichever is earlier.

(7) Except as provided in paragraph (8) of this subsection, if HHSC approves an LOC requested in accordance with §262.104(b)(3) of this chapter (relating to LOC Determination), HHSC pays a program provider for services provided to an individual for a period of not more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(8) If HHSC determines that an ID/RC Assessment was submitted more than 180 calendar days after the expiration date of the previous ID/RC Assessment because of circumstances beyond a pro-

gram provider's control, HHSC may pay the program provider for a period of more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(9) HHSC does not withhold payments to a program provider if a LIDDA fails to enter information from an individual's renewal IPC and the program provider continues to provide services in accordance with the most recent IPC authorized by HHSC.

(b) Provider fiscal compliance reviews.

(1) HHSC conducts provider fiscal compliance reviews to determine a program provider is in compliance with:

(A) this chapter;

(B) the TxHmL Program Billing Requirements;

(C) the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) 40 TAC Chapter 49, Subchapter C; and

(E) the program provider's Community Services Contract-Provider Agreement.

(2) HHSC conducts provider fiscal compliance reviews in accordance with the Provider Fiscal Compliance Review Protocol set forth in the TxHmL Program Billing Requirements and the CFC Billing Requirements for HCS and TxHmL Program Providers. As a result of a provider fiscal compliance review, HHSC may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with HHSC's instructions, a corrective action plan that improves the program provider's billing practices.

(3) A corrective action plan required by HHSC in accordance with paragraph (2)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to HHSC within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by HHSC before implementation.

(4) Within 30 calendar days after HHSC receives a corrective action plan, HHSC notifies the program provider if HHSC approves the corrective action plan or if the plan requires changes.

(5) If HHSC requires a program provider to develop and submit a corrective action plan in accordance with paragraph (2)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §262.602 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. HHSC notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(6) If a program provider does not submit a corrective action plan or complete a required corrective action within the time frames described in paragraph (3) of this subsection, HHSC may impose a vendor hold on payments due to the program provider until the program provider takes the corrective action.

(7) If a program provider does not submit a corrective action plan or complete a required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (6) of this subsection, HHSC may terminate the contract.

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 July 18, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 438-2910

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SUBCHAPTER H. LIDDA REQUIREMENTS

26 TAC §262.701

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§262.701. LIDDA Requirements for Providing Service Coordination in the TxHmL Program.

(a) A LIDDA must offer TxHmL Program services to an applicant in accordance with §262.103 of this chapter (relating to Process for Enrollment of Applicants).

(b) A LIDDA must process enrollments of individuals in the TxHmL Program in accordance with §262.103 of this chapter.

(c) A LIDDA must be objective in the process to assist an individual or LAR in the selection of a program provider or FMSA and train all LIDDA staff who may assist an individual or LAR in the process.

(d) A LIDDA must, upon the enrollment of an individual and annually thereafter, inform the individual or LAR orally and in writing of the following:

(1) the telephone number of the LIDDA to file a complaint;

(2) the toll-free telephone number of the HHSC IDD Ombudsman, 1-800-252-8154, to file a complaint; and

(3) the toll-free telephone number of DFPS, 1-800-647-7418, to report an allegation of abuse, neglect, or exploitation.

(e) A LIDDA must maintain for each individual for an IPC year:

(1) a copy of the IPC;

(2) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

(3) a copy of the ID/RC Assessment;

(4) documentation of the activities performed by the service coordinator in providing service coordination; and

(5) any other pertinent information related to the individual.

(f) For an individual receiving TxHmL Program services and CFC services within a LIDDA's local service area, the LIDDA must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) A LIDDA must ensure that a service coordinator is an employee of the LIDDA and meets the requirements of this subsection.

(1) A service coordinator must meet the minimum qualifications and LIDDA staff training requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), except as described in paragraph (2) of this subsection.

(2) Notwithstanding §331.19(b) of this title (relating to Staff Person Training), a service coordinator must complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension of the six month timeframe is granted by HHSC.

(3) A service coordinator must receive training about the following within the first 90 calendar days after beginning service coordination duties:

(A) rules governing the TxHmL Program and CFC; and

(B) 40 TAC Chapter 41 (relating to Consumer Directed Services Option).

(h) A LIDDA must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-centered planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service or CFC service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) coordinates and develops an individual's IPC based on the individual's PDP;

(4) coordinates and monitors the delivery of TxHmL Program services and CFC services and non-TxHmL Program and non-CFC services; and

(5) document whether an individual progresses toward desired outcomes identified on the individual's PDP from the individual's and LAR's perspectives.

(i) A LIDDA must inform an individual or LAR of the name of the individual's service coordinator and how to contact the service coordinator.

(j) A service coordinator must:

(1) assist the individual or LAR or actively involved person in exercising the legal rights of the individual;

(2) provide an individual, LAR, or family member with a written copy of the booklet, *Your Rights in the Texas Home Living (TxHmL) Program,* available on the HHSC website, and an oral explanation of the rights described in the booklet:

(A) at the time the individual enrolls in the TxHmL Program;

(B) when the booklet is revised;

(C) upon request of the individual, LAR, or family member; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends;

(3) document compliance with paragraph (2) of this subsection in the individual's record and include:

(A) the signature of the individual or LAR; and

(B) the signature of the service coordinator;

(4) ensure that the individual and LAR participate in developing a PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated annually and if the individual's needs or outcomes change;

(5) if a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, discuss with the service planning team to determine whether the techniques will be approved by the service planning team;

(6) if notified by the program provider that an individual or LAR has refused a comprehensive nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of community support, day habilitation, in-home day habilitation, employment readiness, employment assistance, supported employment, respite, or CFC PAS/HAB:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, in-home day habilitation, employment readiness, employment assistance, supported employment, respite, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) inform the individual or LAR of decisions regarding denial, suspension, reduction, or termination of services and the individual's or LAR's right to request a fair hearing as described in §262.601 of this chapter (relating to Fair Hearing); and

(8) in accordance with §262.501 (relating to Process for Individual to Transfer to a Different Program Provider or FMSA), manage the process to transfer an individual's TxHmL Program services and CFC services from one program provider to another or transfer from one FMSA to another.

(k) When a service coordinator becomes aware that a change to an individual's PDP or IPC may be needed, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons.

(l) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service or a CFC service from a program provider, submit to the program provider and the individual or LAR:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(m) A service coordinator must:

(1) complete the HHSC TxHmL Service Coordination Notification form with the individual or LAR and provide a copy of the completed form to the individual or LAR:

(A) upon receipt of HHSC approval of the enrollment of the individual;

(B) if the form is revised;

(C) at the request of the individual or LAR; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends; and

(2) retain a copy of the completed form in the individual's record.

(n) A service coordinator must conduct:

(1) a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility or as a diversion from admission to a nursing facility; and

(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(o) A service coordinator must have contact with an individual in person, by videoconferencing, or telephone to provide service coordination during a month in which it is anticipated that the individual will not receive a TxHmL Program service unless:

(1) the individual's TxHmL Program services have been suspended; or

(2) the service coordinator had an in-person contact with the individual that month to comply with §331.11(d) of this title (relating to LIDDA's Responsibilities).

(p) In addition to the requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), a LIDDA must:

(1) comply with:

(A) this subchapter;

(B) 40 TAC Chapter 41; and

(C) 40 TAC Chapter 4, Subchapter L, (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(2) ensure that a rights protection officer, as required by 40 TAC §4.113 (relating to Rights Protection Officer at a State MR Facility or MRA), who receives a copy of an HHSC initial intake report or a final investigative report from an FMSA, in accordance with 40 TAC §41.702 (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Service Provider) or 40 TAC §41.703 (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Staff Person or a Controlling Person of an FMSA), gives a copy of the report to the individual's service coordinator.

(q) A service coordinator must:

(1) at least annually, in accordance with 40 TAC Chapter 41, Subchapter D (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in 40 TAC §41.108 (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(r) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR of all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on HHSC Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the services provided through the CDS option; and

(4) develop with the individual or LAR and other members of the service planning team a transportation plan if an individual's PDP includes community support to be delivered through the CDS option.

(s) For an individual participating in the CDS option, a service coordinator must recommend that HHSC terminate the individual's participation in the CDS option if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety, or welfare; or

(2) the individual, LAR, or designated representative has not complied with 40 TAC Chapter 41, Subchapter B (relating to Responsibilities of Employers and Designated Representatives).

(t) To make a recommendation described in subsection (s) of this section, a service coordinator must submit the following documentation to HHSC:

(1) the services the individual receives through the CDS option;

(2) the reason why the recommendation is made;

(3) a description of the attempts to resolve the issues before making the recommendation; and

(4) any other supporting documentation, as appropriate.

(u) A service coordinator must do the following regarding responsibilities related to EVV:

(1) for an applicant who will receive a service that requires the use of EVV from the program provider or through the CDS option:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the applicant or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraph (A) - (C) of this paragraph before the individual's enrollment; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(2) for an individual who will receive a service that requires the use of EVV from the program provider or who is transferring to another program provider or LIDDA and will receive a service that requires the use of EVV from the program provider or through the CDS option:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraphs (A)-(C) of this paragraph on or before the effective date of the transfer to another program provider or LIDDA; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record; and

(3) for an individual who will receive a service that requires the use of EVV through the CDS option or who will transfer to another FMSA and is receiving a service requiring the use of EVV:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraphs (A)-(C) of this paragraph before the individual receives the EVV required service through the CDS option or on or before the effective date of the transfer to another FMSA; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record.

(v) If notified by a program provider that a requirement described in §262.202 (d)(1) of this chapter (relating to Requirements for Home and Community-Based Settings), needs to be modified, a service coordinator must update the individual's PDP to include the following:

(1) a description of the specific and individualized assessed need that justifies the modification;

(2) a description of the positive interventions and supports that were tried but did not work;

(3) a description of the less intrusive methods of meeting the need that were tried but did not work;

(4) a description of the condition that is directly proportionate to the specific assessed need;

(5) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;

(6) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(7) the individual's or LAR's signature evidencing informed consent to the modification; and

(8) the program provider's assurance that the modification will cause no harm to the individual.

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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CHAPTER 263. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §263.3, concerning Definitions; §263.5, concerning Description of HCS Program Services; §263.104, concerning Process for Enrollment of Applicants; §263.301, concerning IPC Requirements; §263.304, concerning Service Limits; §263.501, concerning Requirements for Home and Community-Based Settings; §263.601, concerning Program Provider Reimbursement; and §263.901, concerning LIDDA Requirements for Providing Service Coordination in the HCS Program.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement Texas Human Resources Code §32.0755, added by House Bill (H.B.) 4169, 88th Legislature, Regular Session, 2023. The proposed

amendments implement a service similar to prevocational services, named employment readiness, in the Home and Community-based Services (HCS) Program, one of HHSC's §1915(c) Medicaid waiver programs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §263.3 adds and defines the terms "group setting" in new paragraph (36) and the term "job task-oriented" in new paragraph (56) because these new terms are used in the proposed amended rules. The proposed amendment also renumbers the paragraphs in the rule.

The proposed amendment to §263.5 adds a new paragraph (26) in subsection (a), to describe employment readiness. The proposed amendment also renumbers subsection (a).

The proposed amendment to §263.104 adds employment readiness in subsection (k)(9), to the array of HCS Program services that may require the individual's initial individual plan of care (IPC) to include a sufficient amount of registered nursing units for the program provider's registered nurse to perform a comprehensive nursing assessment. In subsection (k)(10)(A)(ii), employment readiness is added to the list of HCS Program services which a service coordinator must inform the applicant or legally authorized representative (LAR) the applicant they may not be able to receive if enough registered nursing units for a comprehensive nursing assessment are not included in the initial IPC.

The proposed amendment to §263.301 adds a new paragraph (15) in subsection (c), requiring authorization of employment readiness to be supported by an HHSC Employment First Discovery Tool and be within the service limit described in the proposed amendment to §263.304.

The proposed amendment to §263.304 adds a new paragraph (7) in subsection (a), to establish a combined service limit for employment readiness and individualized skills and socialization.

The proposed amendment to §263.501 adds a new subsection (d)(1) and (2) to the rule. Proposed new subsection (d)(1) requires a program provider to ensure that a group setting allows an individual to control the individual's own schedule and activities, have access to the individual's food at any time, and receive visitors of the individual's choosing at any time. Proposed new subsection (d)(2) requires a program provider to ensure a group setting is physically accessible and free of hazards. The proposed amendment adds new subsections (e), (f), and (g) that outline requirements for implementing a modification to a requirement in proposed new subsection (d)(1).

The proposed amendment to §263.601, adds employment readiness in paragraph (1)(B), to the array of HCS Program services that HHSC pays in accordance with the individual's LON and reimbursement rate for the service. The proposed amendment adds employment readiness in a new subparagraph (H) in paragraph (3) as an HCS Program service a program provider may bill for if provided on the first day of the individual's suspension or termination. The proposed amendment adds a new subparagraph (E) in paragraph (5) that states HHSC does not pay for employment readiness if the program provider did not ensure and maintain documentation in the individual's record that employment readiness is not available to the individual under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.). The proposed amendment also renumbers the remaining subparagraphs in paragraphs (3) and (5).

The proposed amendment to §263.901 in subsection (e)(21), adds a reference to proposed new §263.501(d)(1), to require a service coordinator to update an individual's person-directed plan if a modification to a service delivered in a group setting is needed. Additionally, the proposed amendment adds employment readiness in subsection (e)(22) to the array of HCS services that require the service coordinator to inform the individual or LAR of the consequences and risks of refusing the comprehensive nursing assessment.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will expand 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, HHSC Chief Financial Officer has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because any changes required by the programs to implement employment readiness services are included in providing contracted client services and the payment rate for providing services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the individuals in the HCS Program will benefit from having an additional service to provide assistance with getting ready for competitive employment and furthering their employment goals.

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 be-

cause the rules do not create new regulations, standards, or processes for program providers and local intellectual and developmental disability authorities to comply. The new service, employment readiness, is included in providing contracted client services and the payment rate for providing services.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist 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.*

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 24R044" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §263.3, §263.5

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendments implement Texas Human Resources Code §32.0755.

§263.3. Definitions.

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

(1) Abuse--

(A) physical abuse;

(B) sexual abuse; or

(C) verbal or emotional abuse.

(2) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(3) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(4) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(5) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code Chapter 247, Assisted Living Facilities.

(6) Applicant--A Texas resident seeking services in the Home and Community-Based Services Program.

(7) Audio-only--An interactive, two-way audio communication platform that only uses sound.

(8) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(9) Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

(10) Calendar day--Any day, including weekends and holidays.

(11) CDS option--Consumer directed services option. A service delivery option as defined in 40 TAC §41.103 (relating to Definitions).

(12) CFC--Community First Choice.

(13) CFC ERS--CFC emergency response services.

(14) CFC FMS--The term used for financial management services on the individual plan of care (IPC) of an applicant or individual if the applicant will receive or the individual receives only CFC personal assistance services (PAS)/habilitation (HAB) through the CDS option.

(15) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant will receive or the individual receives only CFC PAS/HAB through the CDS option.

(16) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(17) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(18) Comprehensive nursing assessment--A comprehensive physical and behavioral assessment of an individual, including the individual's health history, current health status, and current health needs, that is completed by a registered nurse (RN).

(19) Contract--A provisional contract or a standard contract.

(20) CRCG--Community resource coordination group. A local interagency group, composed of public and private agencies, that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Texas Health and Human Services Commission (HHSC) website.

(21) Delegated nursing task--A nursing task delegated by an RN to an unlicensed person in accordance with:

(A) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(22) Designated Representative--This term has the meaning set forth in 40 TAC §41.103.

(23) DFPS--The Department of Family and Protective Services.

(24) DID--Determination of intellectual disability. This term has the meaning set forth in §304.102 of this title (relating to Definitions).

(25) DID report--Determination of intellectual disability report. This term has the meaning set forth in §304.102 of this title.

(26) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in a risk to the health and safety of an individual or another person.

(27) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the legally authorized representative (LAR) should be informed, such as an individual:

(A) needing emergency medical care;

(B) being removed from the individual's residence by law enforcement;

(C) leaving the individual's residence without notifying a staff member or service provider and not being located; and

(D) being moved from the individual's residence to protect the individual (for example, because of a hurricane, fire, or flood).

(28) EVV--Electronic visit verification. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).

(29) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(30) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(31) FMS--Financial management services.

(32) FMSA--Financial management services agency. As defined in 40 TAC §41.103, an entity that provides financial management services to an individual participating in the CDS option.

(33) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(34) Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a setting described in §263.501(b) of this chapter (relating to Requirements for Home and Community-Based Service Settings).

(35) GRO--General residential operation. This term has the meaning set forth in Texas Human Resources Code §42.002.

(36) Group setting--A setting, other than an individual's residence, in which more than one individual or other person receives employment readiness, employment assistance, supported employment, or a similar service.

(37) [~~(36)~~] HCS--Home and Community-based Services. Services provided through the HCS Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(38) [~~(37)~~] Health maintenance activities--This term has the meaning set forth in 22 TAC §225.4 (relating to Definitions).

(39) [~~(38)~~] Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by a licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. This includes tasks delegated by an RN; health maintenance activities, that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(40) [~~(39)~~] HHSC--The Texas Health and Human Services Commission.

(41) [~~(40)~~] Hospital--A public or private institution licensed or exempt from licensure in accordance with Texas Health and Safety Code (THSC) Chapters 13, 241, 261, or 552.

(42) [~~(41)~~] IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(43) [~~(42)~~] ICAP--Inventory for Client and Agency Planning. An instrument designed to assess a person's needs, skills, and abilities.

(44) [~~(43)~~] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(45) [~~(44)~~] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(46) [~~(45)~~] ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC for level of care determination and level of need assignment.

(47) [~~(46)~~] Implementation plan--A written document developed by a program provider for an individual, for each HCS Program service, except supported home living, and for each CFC service, except CFC support management, on the individual's IPC to be provided by the program provider. An implementation plan includes:

(A) a list of outcomes identified in the person-directed plan that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(48) [~~(47)~~] In person or in-person--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

(49) [~~(48)~~] Individual--A person enrolled in the HCS Program.

(50) [~~(49)~~] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(51) [~~(50)~~] Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(52) [~~(51)~~] Intellectual disability--This term has the meaning set forth in §304.102 of this title.

(53) [~~(52)~~] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(54) [~~(53)~~] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(55) [~~(54)~~] IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(56) Job task-oriented--Focused on developing a skill related to a specific type of employment.

(57) [~~(55)~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(58) [~~(56)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(59) [~~(57)~~] LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(60) [~~(58)~~] LON--Level of need. An assignment given by HHSC to an individual upon which reimbursement for host home/companion care, supervised living, residential support, in-home day habilitation, and day habilitation is based.

(61) [~~(59)~~] Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

(62) [~~(60)~~] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(63) [~~(61)~~] Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(64) [~~(62)~~] Mental health facility--A facility licensed in accordance with THSC Chapter 577, Private Mental Hospitals and Other Mental Health Facilities.

(65) [~~(63)~~] Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(66) [~~(64)~~] Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(67) [~~(65)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who voluntarily assist an individual to achieve the individual's identified goals.

(68) [~~(66)~~] Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(69) [~~(67)~~] Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(70) [~~(68)~~] PDP--Person-directed plan. A plan developed with an applicant or individual and LAR using an HHSC form that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety; and

(B) includes the setting for each service, which must be selected by the individual or LAR from setting options.

(71) [~~(69)~~] Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC §533A.035.

(72) [~~(70)~~] Permanency planner--A person who:

(A) develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form; and

(B) performs other permanency planning activities for an applicant or individual under 22 years of age.

(73) [~~(71)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(74) [~~(72)~~] Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(75) [~~(73)~~] Platform--This term has the meaning set forth in Texas Government Code §531.001(4-d).

(76) [~~(74)~~] Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook.

(77) [~~(75)~~] Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the HCS Program Billing Requirements to determine the need for pre-enrollment minor home modifications.

(78) [~~(76)~~] Pre-move site review--A review conducted by the service coordinator in accordance with HHSC's IDD PASRR Handbook.

(79) [~~(77)~~] Professional therapies--Services that consist of the following:

(A) audiology;

(B) occupational therapy;

(C) physical therapy;

(D) speech and language pathology;

(E) behavioral support;

(F) cognitive rehabilitation therapy;

(G) dietary services; and

(H) social work.

(80) [~~(78)~~] Program provider--A person, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with HHSC to provide HCS Program services, excluding an FMSA.

(81) [~~(79)~~] Provisional contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with 40 TAC §49.208(e).

(82) [~~(80)~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(83) [~~(81)~~] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the HCS Program Billing Requirements.

(84) [~~(82)~~] Renewal IPC--An IPC developed for an individual in accordance with §263.302(a) of this chapter (relating to Renewal and Revision of an IPC).

(85) [~~(83)~~] Residential child care facility--This term has the meaning set forth in Texas Human Resources Code §42.002.

(86) [~~(84)~~] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §263.302(b) or (d) of this chapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(87) [~~(85)~~] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(88) [~~(86)~~] Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(89) [~~(87)~~] Service coordination--A service as defined in §331.5 of this title (relating to Definitions).

(90) [~~(88)~~] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(91) [~~(89)~~] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraph (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, a teacher, or if applicable, the permanency planner;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) the service coordinator;

(iii) if the applicant is at least 21 years of age but younger than 22 years of age, the permanency planner;

(iv) a staff member of the program provider;

(v) providers of specialized services;

(vi) a nursing facility staff person who is familiar with the applicant's needs;

(vii) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(viii) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or ICF/IID or has enrolled in the HCS Program as a diversion from admission to an institution, including a nursing facility or ICF/IID, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) the service coordinator;

(iii) if the individual is at least 21 years of age but younger than 22 years of age and resides in a three-person residence or four-person residence, the permanency planner;

(iv) a staff member of the program provider;

(v) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(vi) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(92) [~~(90)~~] Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(93) [~~(91)~~] Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(94) [~~(92)~~] Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(95) [~~(93)~~] Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(96) [~~(94)~~] Specialized services--This term has the meaning set forth in §303.102 of this title (relating to Definitions).

(97) [~~(95)~~] Staff member--An employee or contractor of an HCS program provider.

(98) [~~(96)~~] Standard contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.209 (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with 40 TAC §49.209(d).

(99) [~~(97)~~] State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(100) [~~(98)~~] Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(101) [~~(99)~~] Supported Decision-Making Agreement--This term has the meaning set forth in Texas Estates Code §1357.002(4).

(102) [~~(100)~~] Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(103) [~~(101)~~] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(104) [~~(102)~~] TANF--Temporary Assistance for Needy Families.

(105) [~~(103)~~] TAS--Transition assistance services.

(106) [~~(104)~~] Telehealth service--This term has the meaning set forth in Texas Occupations Code §111.001.

(107) [~~(105)~~] Temporary admission--A stay in a facility listed in §263.705(a) of this chapter (relating to Suspension of HCS Program Services and CFC Services) for 270 calendar days or less or, if an extension is granted in accordance with §263.705(h) of this chapter, a stay in such a facility for more than 270 calendar days.

(108) [~~(106)~~] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a setting described in §263.501(b) of this chapter.

(109) [~~(107)~~] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(110) [~~(108)~~] Transfer IPC--An IPC that is developed in accordance with §263.701 of this chapter (relating to Process for Individual to Transfer to a Different Program Provider or FMSA) and §263.702 of this chapter (relating to Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider) when an individual transfers to another program provider or chooses a different service delivery option.

(111) [~~(109)~~] Transition plan--A written plan developed in accordance with §303.701 of this title (relating to Transition Planning for a Designated Resident) for an applicant residing in a nursing facility who is enrolling in the HCS Program.

(112) [~~(110)~~] Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using the HHSC Individual Transportation Plan form available on the HHSC website. A transportation plan is used to document how supported home living will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(113) [~~(111)~~] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(114) [~~(112)~~] Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(115) [~~(113)~~] Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(116) [~~(114)~~] Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

§263.5. Description of HCS Program Services.

(a) HCS Program services are described in this section and in Appendix C of the HCS Program waiver application approved by CMS and available on the HHSC website.

(1) Adaptive aids are devices, controls, or items that are necessary to address specific needs identified in an individual's service plan. Adaptive aids enable an individual to maintain or increase the ability to perform ADLs or the ability to perceive, control, or communicate with the environment in which the individual lives.

(2) Audiology is the provision of audiology as defined in the Texas Occupations Code Chapter 401.

(3) Speech and language pathology is the provision of speech-language pathology as defined in the Texas Occupations Code Chapter 401.

(4) Occupational therapy is the provision of occupational therapy as described in the Texas Occupations Code Chapter 454.

(5) Physical therapy is the provision of physical therapy as defined in the Texas Occupations Code Chapter 453.

(6) Dietary services are the provision of nutrition services as defined in the Texas Occupations Code Chapter 701.

(7) Behavioral support is the provision of specialized interventions that:

(A) assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life; and

(B) improve an individual's quality of life.

(8) Social work is the provision of social work as defined in Texas Occupations Code Chapter 505.

(9) Cognitive rehabilitation therapy is assistance to an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells/chemistry in order to enable the individual to compensate for the lost cognitive functions, including reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(10) Day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual. Day habilitation does not include in-home day habilitation.

(11) In-home day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in an individual's residence.

(12) Dental treatment is:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(13) Minor home modifications are physical adaptations to an individual's home to address specific needs identified by an individual's service planning team and include pre-enrollment minor home modifications which are modifications completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(14) Licensed vocational nursing is the provision of licensed vocational nursing as defined in the Texas Occupations Code Chapter 301.

(15) Registered nursing is the provision of professional nursing as defined in the Texas Occupations Code Chapter 301.

(16) Specialized registered nursing is the provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(17) Specialized licensed vocational nursing is the provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(18) Supported home living is transportation of an individual with a residential type of "own/family home."

(19) Host home/companion care is residential assistance provided in a residence that is owned or leased by the service provider of host home/companion care or the individual and is not owned or leased by the program provider. The service provider of host home/companion care must live in the same residence as the individual receiving the service.

(20) Supervised living is residential assistance provided in a three-person residence or four-person residence in which service providers are present in the residence and are able to respond to the needs of individuals during normal sleeping hours.

(21) Residential support is residential assistance provided in a three-person residence or four-person residence in which service providers are present and awake in the residence whenever an individual is present in the residence.

(22) Respite is temporary relief for an unpaid caregiver in a location other than the individual's home for an individual who has a residential type of "own/family home."

(23) In-home respite is temporary relief for an unpaid caregiver in the individual's home for an individual who has a residential type of "own/family home."

(24) Employment assistance is assistance to help an individual locate paid employment in the community.

(25) Supported employment is assistance, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(26) Employment readiness is assistance that prepares an individual to participate in employment. Employment readiness services are not job-task oriented.

(27) [~~(26)~~] TAS is assistance to an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program and consists of:

(A) for an applicant whose initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(b) The services described in this subsection are for an individual who is receiving at least one HCS Program service through the CDS option.

(1) FMS is a service defined in 40 TAC §41.103 (relating to Definitions).

(2) Support consultation is a service defined in 40 TAC §41.103.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-2910

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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

26 TAC §263.104

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§263.104. Process for Enrollment of Applicants.

(a) HHSC notifies a LIDDA, in writing, when the opportunity for enrollment in the HCS Program becomes available in the LIDDA's local service area and directs the LIDDA to offer enrollment to an applicant:

(1) whose interest list date, assigned in accordance with §263.103 of this subchapter (relating to HCS Interest List), is earliest on the statewide interest list for the HCS Program maintained by HHSC; or

(2) who is a member of a target group identified in the HCS Program waiver application approved by CMS.

(b) Except as provided in subsection (c) of this section, a LIDDA must offer enrollment in the HCS Program in writing and deliver it to the applicant or LAR by United States mail or by hand delivery.

(c) A LIDDA must offer enrollment in the HCS Program to an applicant described in subsection (a)(2) of this section in accordance with HHSC's procedures.

(d) A LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of enrollment in the HCS Program within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the HCS Program, the LIDDA terminates those services funded by general revenue that are similar to services provided in the HCS Program; and

(2) the HHSC Deadline Notification form, which is available on the HHSC website.

(e) If an applicant or LAR responds to an offer of enrollment in the HCS Program, a LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member if possible, both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program, both state supported living centers and community-based facilities, waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports, using the HHSC Explanation of Services and Supports document, which is available on the HHSC website;

(2) provide the applicant and LAR both an oral and a written explanation of all HCS Program services and CFC services using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website; and

(3) give the applicant or LAR the HHSC Waiver Program Verification of Freedom of Choice form, which is available on the HHSC website, to document the applicant's choice between the HCS Program or the ICF/IID Program.

(f) A LIDDA must withdraw an offer of enrollment in the HCS Program made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of enrollment in the HCS Program;

(2) within seven calendar days after the applicant or LAR receives the HHSC Waiver Program Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not use the form to document the applicant's choice, the HCS Program or the ICF/IID Program;

(3) within 30 calendar days after the applicant or LAR receives the contact information for all program providers in the LIDDA's local service area in accordance with subsection (j)(3) of this section, the applicant or LAR does not document the choice of a program provider using the HHSC Documentation of Provider Choice form, which is available on the HHSC website;

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and HHSC has approved the withdrawal of the offer; or

(5) the applicant has moved out of the State of Texas.

(g) If a LIDDA withdraws an offer of enrollment in the HCS Program made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If an applicant is currently receiving services from a LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the HCS Program, the LIDDA must terminate those services funded by general revenue that are similar to services provided in the HCS Program.

(i) If a LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with 40 TAC §2.46 (relating to Notification and Appeals Process).

(j) If an applicant or LAR accepts the offer of enrollment in the HCS Program, the LIDDA must compile and maintain information necessary to process the applicant's request for enrollment.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIDDA must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA must complete an ID/RC Assessment in accordance with §263.105 of this subchapter (relating to LOC Determination) and §263.106 of this subchapter (relating to LON Assignment).

(A) The LIDDA must:

(i) do one of the following:

(I) conduct a DID in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability) except that the following activities must be conducted in person:

(-a-) a standardized measure of the individual's intellectual functioning using an appropriate test based on the characteristics of the individual; and

(-b-) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's adaptive behavior level; or

(II) review and endorse a DID report in accordance with §304.403 of this title (relating to Review and Endorsement of a Determination of Intellectual Disability Report); and

(ii) determine whether the applicant has been diagnosed by a licensed physician as having a related condition.

(B) The LIDDA must:

(i) conduct an ICAP assessment in person; and

(ii) recommend an LON assignment to HHSC in accordance with §263.106 of this subchapter.

(C) The LIDDA must enter the information from the completed ID/RC Assessment and electronically submit the information to HHSC for approval in accordance with §263.105(a) of this subchapter and §263.106(a) of this subchapter and, if applicable, submit supporting documentation as required by §263.107(c) of this subchapter (relating to HHSC Review of LON).

(3) The LIDDA must provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area.

(4) The LIDDA must assign a service coordinator who, together with other members of the applicant's service planning team, must:

(A) develop a PDP;

(B) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form, which is available on the HHSC website, to determine the number of CFC PAS/HAB hours the applicant needs; and

(C) develop an initial IPC in accordance with §263.301(c) of this chapter (relating to IPC Requirements).

(5) The CFC PAS/HAB Assessment form required by paragraph (4)(B) of this subsection must be completed in person with the individual unless the following conditions are met in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(6) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §263.401(a) and (b) of this chapter (relating to CDS Option).

(k) A service coordinator must:

(1) arrange for meetings and visits with potential program providers as requested by an applicant or LAR;

(2) review the initial IPC with potential program providers as requested by the applicant or LAR;

(3) ensure that the applicant's or LAR's choice of a program provider is documented on the HHSC Documentation of Provider Choice form and that the form is signed by the applicant or LAR;

(4) negotiate and finalize the initial IPC and the date services will begin with the selected program provider, consulting with HHSC if necessary to reach agreement with the selected program provider on the content of the initial IPC and the date services will begin;

(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO; and

(B) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form, which is available on the HHSC website, in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each transition assistance service identified, which must be within the service limit described in §263.304(a)(6) of this chapter (relating to Service Limits);

(B) submit the completed form to HHSC to determine if TAS is authorized;

(C) send the form authorized by HHSC to the selected program provider; and

(D) include the TAS and the monetary amount authorized by HHSC on the applicant's initial IPC;

(7) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not met the maximum service limit for minor home modifications as described in §263.304(a)(3)(A) of this chapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, the HHSC Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form, which is available on the HHSC website, in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;

(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider; and

(iii) based on documentation provided by the program provider as required by the *HCS Program Billing Requirements,* stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §263.304(a)(3)(A) of this chapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to HHSC to determine if pre-enrollment minor home modification and pre-enrollment minor home modifications assessments are authorized;

(C) send the form authorized by HHSC to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by HHSC on the applicant's initial IPC;

(9) if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB, ensure that the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment unless:

(A) nursing services are not on the IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on the HHSC Nursing Task Screening Tool form; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician;

(10) if an applicant or LAR refuses to include on the initial IPC a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment as required by paragraph (9) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB from the program provider, will result in the individual not receiving that service unless:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the initial IPC for a comprehensive nursing assessment by the program provider's RN in the applicant's record;

(11) ensure that the applicant or LAR signs and dates the initial IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(12) ensure that the selected program provider signs and dates the initial IPC, demonstrating agreement that the services will be provided to the applicant;

(13) sign and date the initial IPC, which indicates that the service coordinator agrees that the requirements described in §263.301(c) of this chapter have been met;

(14) using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website, provide an oral and written explanation to the applicant or LAR:

(A) of the eligibility requirements for HCS Program services as described in §263.101(a) of this subchapter (relating to Eligibility Criteria for HCS Program Services and CFC Services);

(B) if the applicant's PDP includes CFC services:

(i) of the eligibility requirements for CFC services as described in §263.101(c) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) of the eligibility requirements for CFC services as described in §263.101(d) of this subchapter to applicants who receive MAO Medicaid;

(C) that HCS Program services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §263.101(a) of this subchapter; or

(ii) the individual or LAR requests termination of HCS Program services; and

(D) if the applicant's PDP includes CFC services, that CFC services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §263.101(c) or (d) of this subchapter; or

(ii) the individual or LAR requests termination of CFC services.

(l) A LIDDA must conduct permanency planning in accordance with §263.902(a) - (f) of this chapter (relating to Permanency Planning).

(m) After an initial IPC is finalized and signed in accordance with subsection (k) of this section, the LIDDA must:

(1) enter the information from the initial IPC in the HHSC data system and electronically submit it to HHSC;

(2) keep the original initial IPC in the individual's record;

(3) ensure the information from the initial IPC entered in the HHSC data system and electronically submitted to HHSC contains information identical to the information on the initial IPC; and

(4) submit other required enrollment information to HHSC.

(n) HHSC notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. When the enrollment is approved, HHSC authorizes the applicant's enrollment in the HCS Program through the HHSC data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) Before the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable:

(1) copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations;

(2) the completed ID/RC Assessment;

(3) the initial IPC;

(4) the applicant's PDP; and

(5) if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(p) Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, the selected program provider must not initiate services until notified of HHSC's approval of the applicant's enrollment.

(q) The selected program provider and the individual or LAR must develop:

(1) an implementation plan for:

(A) HCS Program services, except for supported home living, that is based on the individual's PDP and IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if supported home living is included on the PDP.

(r) A LIDDA must retain in an applicant's record:

(1) the HHSC Waiver Program Verification of Freedom of Choice form;

(2) the HHSC Documentation of Provider Choice form, if applicable;

(3) the HHSC Deadline Notification form; and

(4) any other correspondence related to the offer of enrollment in the HCS 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
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SUBCHAPTER D. DEVELOPMENT AND REVIEW OF AN IPC

26 TAC §263.301, §263.304

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendments implement Texas Human Resources Code §32.0755.

§263.301. IPC Requirements.

(a) An IPC must be based on the PDP and specify:

(1) the type and amount of each HCS Program service and CFC service to be provided to an individual during an IPC year;

(2) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services during an IPC year, including natural supports, medical services, day activity, and educational services;

(3) if an individual will receive CFC support management; and

(4) if there are any HCS Program services or CFC services identified on the PDP as critical, requiring a service backup plan.

(b) If an applicant's or individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, a service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the applicant or individual will receive support consultation, CFC support consultation instead of support consultation.

(c) The type and amount of each HCS Program service and CFC service in an IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on HHSC's approved list in the *HCS Program Billing Requirements;* and

(B) be within the service limit described in §263.304 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing $500 or more, must be supported by a written assessment from a licensed professional specified by HHSC in the *HCS Program Billing Requirements;*

(8) if a minor home modification costing $1,000 or more, must be supported by a written assessment from a licensed professional specified by HHSC in the *HCS Program Billing Requirements;*

(9) if dental treatment, must be within the service limit described in §263.304 of this subchapter;

(10) if respite, must be within the service limit described in §263.304 of this subchapter;

(11) if TAS, must be:

(A) supported by a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC; and

(B) within the service limit described in §263.304(a)(6)(A) or (B) of this subchapter;

(12) if pre-enrollment minor home modifications, must be:

(A) supported by a written assessment from a licensed professional if required by the *HCS Program Billing Requirements;*

(B) supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC;

(C) within the service limit described in §263.304(a)(3)(A) of this subchapter;

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC; [~~and~~]

(14) if CFC PAS/HAB, must be supported by the HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and [.]

(15) if employment readiness, must be:

(A) supported by an HHSC Employment First Discovery Tool that is completed in accordance with §284.105 of this title (relating to Uniform Process); and

(B) within the service limit described in §263.304 of this subchapter.

§263.304. Service Limits.

(a) The following limits apply to an individual's HCS Program services:

(1) for adaptive aids, $10,000 during an IPC year;

(2) for dental treatment, $2,000 during an IPC year;

(3) for minor home modifications and pre-enrollment minor home modifications combined:

(A) $7,500 during the time the individual is enrolled in the HCS Program, which may be paid in one or more IPC years; and

(B) a maximum of $300 for repair and maintenance during an IPC year;

(4) for respite and in-home respite combined, 300 hours during an IPC year;

(5) for day habilitation and in-home day habilitation combined, 260 units during an IPC year; [~~and~~]

(6) for TAS:

(A) $2,500 if the applicant's initial IPC does not include residential support, supervised living, or host home/companion care; or

(B) $1,000 if the applicant's initial IPC includes residential support, supervised living, or host home/companion care; and [.]

(7) for employment readiness and individualized skills and socialization combined:

(A) 1560 hours during an IPC year;

(B) six hours per calendar day; and

(C) five days per calendar week.

(b) An individual may receive TAS only once in the individual's lifetime.

(c) A program provider may request, in accordance with the *HCS Program Billing Requirements,* authorization of a requisition fee:

(1) for dental treatment that is in addition to the $2,000 service limit described in subsection (a)(2) of this section;

(2) for a minor home modification that is in addition to the $7,500 service limit described in subsection (a)(3)(A) of this section; or

(3) for an adaptive aid that is in addition to the $10,000 service limit described in subsection (a)(1) of this section.

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 SERVICE SETTINGS AND PROGRAM

PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS

26 TAC §263.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§263.501. Requirements for Home and Community-Based Settings.

(a) A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.

(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:

(A) seek employment and work in a competitive integrated setting;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community.

(2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in the PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board.

(3) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

(5) The setting facilitates individual choice regarding services and supports and the service providers who provide the services and supports.

(b) Except as provided in subsection (c) of this section, a program provider must ensure that HCS Program services and CFC services are not provided in a setting that is presumed to have the qualities of an institution. A setting is presumed to have the qualities of an institution if the setting:

(1) is located in a building in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID;

(2) is located in a building on the grounds of, or immediately adjacent to, a certified ICF/IID operated by a LIDDA or state supported living center;

(3) is located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution;

(4) is located in a building on the grounds of, or immediately adjacent to, a hospital, a nursing facility, or other institution except for a licensed private ICF/IID; or

(5) has the effect of isolating individuals from the broader community of persons not receiving Medicaid HCBS.

(c) A program provider may provide an HCS Program service or a CFC service to an individual in a setting that is presumed to have the qualities of an institution as described in subsection (b) of this section, if CMS determines through a heightened scrutiny review that the setting:

(1) does not have the qualities of an institution; and

(2) does have the qualities of home and community-based settings.

(d) In addition to the requirements in subsection (a) of this section, a program provider must ensure that a group setting:

(1) allows an individual to:

(A) control the individual's schedule and activities;

(B) have access to the individual's food at any time; and

(C) receive visitors of the individual's choosing at any time; and

(2) is physically accessible and free of hazards to an individual.

(e) If a program provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the program provider must:

(1) notify the service coordinator of the needed modification; and

(2) provide the service coordinator with the information described in §263.901(e)(21) of this chapter relating to (LIDDA Requirements for Providing Service Coordination in the HCS Program) as requested by the service coordinator.

(f) If a service coordinator receives a notification as described in subsection (e) of this section, the service coordinator must convene a service planning team meeting to update the PDP as described §263.901(e)(21) of this chapter.

(g) After the service planning team updates the PDP as required by subsection (f) of this section, the program provider may implement the modifications.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-2910

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SUBCHAPTER G. REIMBURSEMENT BY HHSC

26 TAC §263.601

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§263.601. Program Provider Reimbursement.

The following requirements apply to program provider reimbursement.

(1) HHSC pays a program provider as described in this paragraph.

(A) HHSC pays for supported home living, professional therapies, nursing, respite, in-home respite, employment assistance, supported employment, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) HHSC pays for host home/companion care, residential support, supervised living, employment readiness, in-home day habilitation and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) HHSC pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the HCS Program Billing Requirements available on the HHSC website.

(D) HHSC pays:

(i) for TAS based on a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC and the actual cost of the TAS as evidenced by purchase receipts required by the HCS Program Billing Requirements; and

(ii) if requested, a TAS service fee in accordance with the HCS Program Billing Requirements.

(E) HHSC pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, as evidenced by documentation required by the HCS Program Billing Requirements.

(F) Subject to the requirements in the HCS Program Billing Requirements, HHSC pays for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(G) HHSC pays for CFC ERS based on the actual cost of the service, not to exceed the reimbursement rate ceiling for CFC ERS.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in 40 TAC §49.311 (relating to Claims Payment) and the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers.

(3) If an individual's HCS Program services or CFC services are suspended or terminated a program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

(A) in-home day habilitation;

(B) day habilitation;

(C) supported home living;

(D) in-home respite;

(E) respite;

(F) employment assistance;

(G) supported employment;

(H) employment readiness;

(I) [~~(H)~~] professional therapies;

(J) [~~(I)~~] nursing; and

(K) [~~(J)~~] CFC PAS/HAB.

(4) If a program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by HHSC in the HCS Program Billing Requirements and other documentation as required by the HCS Program Billing Requirements.

(5) HHSC does not pay a program provider for:

(A) a service or recoups any payments made to the program provider for a service if:

(i) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service was, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(ii) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment:

(I) the service was provided to an individual during a period of time for which there was not a signed, dated, and authorized IPC for the individual;

(II) the service was provided during a period of time for which there was not a signed and dated ID/RC Assessment for the individual;

(III) the service was provided during a period of time for which the individual did not have an LOC determination;

(IV) the service was not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §263.301(c) of this chapter (relating to IPC Requirements);

(V) the service was not provided in accordance with the individual's PDP or implementation plan;

(VI) the service was provided before the individual's enrollment date into the HCS Program; or

(VII) the service was not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §263.302(d) of this chapter (relating to Renewal and Revision of an IPC);

(iii) the service was not provided in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(iv) the service was not documented in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(v) the program provider did not comply with 40 TAC §49.305 (relating to Records);

(vi) the claim for the service was not prepared and submitted in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(vii) the claim for the service did not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(viii) the program provider does not have the documentation described in paragraph (3) of this section;

(ix) HHSC determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

(x) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(xi) the service was paid at an incorrect LON because the information entered in the HHSC data system from a completed ID/RC Assessment was not identical to the information on the completed ID/RC Assessment; or

(xii) the service was not provided;

(B) supervised living or residential support, if the program provider provided the supervised living or residential support service in a residence in which four individuals or other persons receiving similar services live without HHSC's approval as described in rules governing the HCS Program;

(C) employment assistance, if before including the employment assistance on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment assistance was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(D) supported employment, if before including the supported employment on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that supported employment was not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(E) employment readiness, if before including the employment readiness on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment readiness was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(F) [~~(E)~~] host home/companion care, residential support, or supervised living, if the host home/companion care, residential support, or supervised living was provided on the day of the individual's suspension or termination of HCS Program services;

(G) [~~(F)~~] TAS, if the TAS, was not provided in accordance with a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC;

(H) [~~(G)~~] pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, if the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, was not provided in accordance with a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC;

(I) [~~(H)~~] a CFC service, if the CFC service, was provided to an individual receiving host home/companion care, supervised living, or residential support;

(J) [~~(I)~~] supported home living, if the supported home living, was not provided in accordance with a transportation plan and §263.5(a)(18) of this chapter (relating to Description of HCS Program Services); or

(K) [~~(J)~~] CFC PAS/HAB, in-home day habilitation provided to an individual with a residential type of "own/family home," or in-home respite, if the CFC PAS/HAB, in-home day habilitation, or in-home respite, did not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval).

(6) A program provider must refund to HHSC any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from HHSC, whichever is earlier.

(7) Except as provided in paragraph (8) of this section, if HHSC approves an LOC requested in accordance with §263.105(b)(3) of this chapter (relating to LOC Determination), HHSC pays a program provider for services provided to an individual for a period of not more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(8) If HHSC determines that a program provider submitted an ID/RC Assessment more than 180 calendar days after the expiration date of the previous ID/RC Assessment, because of circumstances beyond the program provider's control, HHSC may pay the program provider for a period of more than 180 calendar days after the date the individual's previous ID/RC Assessment expired.

(9) HHSC conducts provider fiscal compliance reviews to determine whether a program provider is in compliance with:

(A) this chapter;

(B) the HCS Program Billing Requirements;

(C) the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) 40 TAC §§49.301-49.313; and

(E) the program provider's Community Services Contract-Provider Agreement.

(10) HHSC conducts provider fiscal compliance reviews in accordance with the Provider Fiscal Compliance Review Protocol set forth in the HCS Program Billing Requirements and the CFC Billing Requirements for HCS and TxHmL Program Providers. As a result of a provider fiscal compliance review, HHSC may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with HHSC's instructions, a corrective action plan that improves the program provider's billing practices.

(11) A corrective action plan required by HHSC in accordance with paragraph (10)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to HHSC within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by HHSC before implementation.

(12) Within 30 calendar days after HHSC receives a corrective action plan, HHSC notifies the program provider if HHSC approves the corrective action plan or if the plan requires changes.

(13) If HHSC requires a program provider to develop and submit a corrective action plan in accordance with paragraph (10)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §263.802 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. HHSC notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(14) If a program provider does not submit a corrective action plan or complete a required corrective action within the time frames described in paragraph (11) of this section, HHSC may impose a vendor hold on payments due to the program provider until the program provider takes the corrective action.

(15) If a program provider does not submit a corrective action plan or complete a required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (14) of this section, HHSC may terminate the contract.

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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Health and Human Services Commission
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SUBCHAPTER J. LIDDA REQUIREMENTS

26 TAC §263.901

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The amendment implements Texas Human Resources Code §32.0755.

§263.901. LIDDA Requirements for Providing Service Coordination in the HCS Program.

(a) In addition to the requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), a LIDDA must:

(1) comply with:

(A) this chapter;

(B) 40 TAC Chapter 41 (relating to Consumer Directed Services Option); and

(C) 40 TAC Chapter 4, Subchapter L (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(2) ensure that a rights protection officer required by 40 TAC §4.113 (relating to Rights Protection Officer at a State MR Facility or MRA), who receives a copy of an HHSC initial intake report or a final investigative report from an FMSA in accordance with 40 TAC §41.702 (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Service Provider) or 40 TAC §41.703 (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Staff Person or a Controlling Person of an FMSA), gives a copy of the report to the individual's service coordinator.

(b) A LIDDA must ensure that a service coordinator is an employee of the LIDDA and meets the requirements of this subsection.

(1) A service coordinator must meet the minimum qualifications and LIDDA staff training requirements described in Chapter 331 of this title except as described in paragraph (2) of this subsection.

(2) Notwithstanding §331.19(b)(2)(B) of this title (relating to Staff Person Training), a service coordinator must complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension of the six month timeframe is granted by HHSC.

(3) A service coordinator must receive training about the following within the first 90 calendar days after beginning service coordination duties:

(A) rules governing the HCS Program and CFC; and

(B) 40 TAC Chapter 41.

(c) A LIDDA must have a process for receiving and resolving complaints from a program provider related to the LIDDA's provision of service coordination or the LIDDA's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the LIDDA must ensure that the concern is communicated to the program provider and attempts are made to resolve the concern. The LIDDA may refer an unresolved concern to HHSC by calling the HHSC IDD Ombudsman toll-free telephone number at 1-800-252-8154.

(e) A service coordinator must:

(1) assist an individual, LAR, or actively involved person in exercising the legal rights of the individual;

(2) provide an individual, LAR, or family member with the booklet, *Your Rights In the Home and Community-based Services (HCS) Program,* available on the HHSC website, and the HHSC HCS Rights Addendum form, and an oral explanation of the rights in the booklet and the form:

(A) upon the individual's enrollment in the HCS Program;

(B) upon revision of the booklet or the form;

(C) upon request; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends;

(3) document the provision of the information required by paragraph (2) of this subsection, and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, upon enrollment of an individual and annually thereafter, the individual or LAR is informed orally and in writing of the following:

(A) the telephone number of the LIDDA to file a complaint;

(B) the toll-free telephone number of the HHSC IDD Ombudsman, 1-800-252-8154, to file a complaint; and

(C) the toll-free telephone number of DFPS, 1-800-647-7418, to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate the person-centered planning process to meet the goals and outcomes identified by an individual and LAR in the individual's PDP, including scheduling service planning team meetings;

(7) to meet the needs of an individual as those needs are identified, develop for the individual a full range of services and resources using:

(A) providers for services other than HCS Program services and CFC services; and

(B) advocates or other actively involved persons;

(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §263.104(j)(4)(A) of this chapter (relating to Process for Enrollment of Applicants);

(ii) §263.302 of this chapter (relating to Renewal and Revision of an IPC); and

(iii) §331.11 of this title (relating to LIDDA's Responsibilities); and

(B) document, for each HCS Program service, other than supervised living and residential support, and for each CFC service, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) ensure that the updated finalized PDP is signed by the individual or LAR;

(10) participate in the development, renewal, and revision of an individual's IPC in accordance with §263.104 and §263.302 of this chapter;

(11) ensure the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §263.302 of this chapter and ensure the service planning team completes other responsibilities and activities as described in this chapter;

(12) notify the service planning team if the service coordinator receives notification from the program provider that:

(A) an individual's behavior requires the implementation of a behavior support plan; or

(B) based on an annual review by the program provider, an individual's behavior support plan needs to continue;

(13) if a change to an individual's PDP is needed, other than as required by §263.302 of this chapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons;

(B) update the PDP as necessary; and

(C) within 10 calendar days after the PDP is updated, send a copy of the updated PDP to the program provider, the individual or LAR and, if applicable, the FMSA;

(14) provide an individual's program provider a copy of the individual's current PDP;

(15) monitor the provision of HCS Program services, CFC services, and non-HCS Program and non-CFC services to an individual;

(16) document whether an individual or LAR perceives that the individual is progressing toward desired outcomes identified on the individual's PDP;

(17) together with the program provider, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program and non-CFC services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from one of the following professionals:

(A) a psychologist licensed in accordance with Texas Occupations Code Chapter 501;

(B) a speech-language pathologist licensed in accordance with Texas Occupations Code Chapter 401; or

(C) an occupational therapist licensed in accordance with Texas Occupations Code Chapter 454;

(18) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(19) if individual does not have a guardian:

(A) ensure that the service planning team determines whether the individual would benefit from having a guardian or a less restrictive alternative to a guardian;

(B) if the service planning team determines that the individual would benefit from having a less restrictive alternative to a guardian such as a supported decision making agreement, take appropriate actions to implement such an alternative; and

(C) if the service planning team determines that the individual would benefit from having a guardian, make a referral to the appropriate court if:

(i) the individual would not benefit from a less restrictive alternative to a guardian; or

(ii) the individual would benefit from having a less restrictive alternative to a guardian but implementing such an alternative is not feasible;

(20) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service or a CFC service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(21) if notified by the program provider that a requirement described in §263.501(d)(1) of this chapter (relating to Requirements for Home and Community-Based Settings), §263.502(b)(1) - (7) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) or §263.503(c)(15) of this chapter (relating to Residential Agreements) [~~or §263.502(b)(1) - (7) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings)~~] needs to be modified, update the individual's PDP to include the following:

(A) a description of the specific and individualized assessed need that justifies the modification;

(B) a description of the positive interventions and supports that were tried but did not work;

(C) a description of the less intrusive methods of meeting the need that were tried but did not work;

(D) a description of the condition that is directly proportionate to the specific assessed need;

(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;

(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(G) the individual's or LAR's signature evidencing informed consent to the modification; and

(H) the program provider's assurance that the modification will cause no harm to the individual;

(22) if notified by the program provider that an individual or LAR has refused a comprehensive nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual's not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(23) if the service coordinator determines that HCS Program services or CFC services provided for an individual should be terminated, including for a reason described in §263.104(k)(14)(C) or (D) of this chapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated; and

(ii) the attempts by the service coordinator to resolve the situation;

(B) send a written recommendation to terminate the individual's HCS Program services or CFC services to HHSC and include the documentation required by subparagraph (A) of this paragraph; and

(C) provide a copy of the written recommendation and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services or all CFC services, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services and CFC services; and

(iii) possible service resources upon termination, including CFC services through a managed care organization; and

(B) submit documentation to HHSC that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(26) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(27) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(28) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(29) unless contraindications are documented with justification by the service planning team, ensure that an individual who is 18 years or older has opportunities to participate in day activities of the individual's or LAR's choice that promote achievement of PDP outcomes;

(30) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(31) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(32) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(33) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR to assist the LIDDA in conducting permanency planning or if notified by the LIDDA that the LIDDA is unable to locate the parent or LAR in accordance with §263.902(g)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (35)(A) and (B) of this subsection; and

(B) notify HHSC, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that HHSC initiate a search for the parent or LAR;

(34) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (35)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (35)(B) of this subsection; and

(B) notify HHSC, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that HHSC initiate a search for the parent or LAR;

(35) request from and encourage the parent or LAR of an individual under 22 years of age requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom HHSC or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(36) within three business days after an individual under 22 years of age begins receiving supervised living or residential support:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see the HHSC website for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the individual's residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the individual's residence is located, if the individual is under three years of age (see the HHSC website to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's sex;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information;

(37) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person, by videoconferencing, or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is at least 18 years of age and under 22 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record;

(38) in accordance with Chapter 303, Subchapter G of this title (relating to Transition Planning) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility or as a diversion from admission to a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility;

(39) do the following to inform applicants and individuals about responsibilities related to EVV:

(A) for an applicant who will receive a service that requires the use of EVV from the program provider or through the CDS option:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the applicant or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i) - (iii) of this subparagraph before the individual's enrollment; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(B) for an individual who will receive a service that requires the use of EVV from the program provider or who is transferring to another program provider or LIDDA and will receive a service that requires the use of EVV from the program provider or through the CDS option:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i)-(iii) of this subparagraph on or before the effective date of the IPC that includes the EVV required service or the effective date of the transfer to another program provider or LIDDA; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record; and

(C) for an individual who will receive a service that requires the use of EVV through the CDS option or who will transfer to another FMSA and is receiving a service requiring the use of EVV:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i)-(iii) of this subparagraph before the individual receiving the EVV required service through the CDS option or on or before the effective date of the transfer to another FMSA; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(40) have contact with an individual in-person, by videoconferencing, or telephone to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service unless:

(A) the individual's HCS Program services have been suspended; or

(B) the service coordinator had an in-person contact with the individual that month to comply with §331.11(d) of this title (relating to LIDDA's Responsibilities);

(41) within one business day after the meeting to revise an IPC described in §263.503(k) of this chapter (relating to Residential Agreements), submit the following documentation to HHSC if the individual or LAR wants to keep residential support, supervised living, or host home/companion care on the individual's IPC:

(A) a completed HHSC Notification of Service Coordinator Disagreement form;

(B) a copy of the written notice of proposed eviction described in §263.503(h)(3) of this chapter;

(C) a copy of the written notice to vacate described in §263.503(j)(3) of this chapter;

(D) progress notes from any meetings related to the eviction; and

(E) a copy of the individual's PDP; and

(42) within one business day after receiving the notice from a program provider described in §263.503(m) of this chapter, notify HHSC that the individual is no longer delinquent in room or board payments.

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 July 18, 2024.

TRD-202403191

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 438-2910

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CHAPTER 564. CHEMICAL DEPENDENCY TREATMENT FACILITIES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §564.39

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §564.39, concerning Dangers of Substance Misuse Educational Program Requirements.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with and implement House Bill (H.B.) 5183, 88th Legislature, Regular Session, 2023. H.B. 5183 amended Texas Transportation Code Chapter 521 and, in part, requires HHSC to approve a substance misuse educational program that a residential chemical dependency treatment facility (CDTF) licensed under Texas Health and Safety Code Chapter 464 may provide to an individual whose driver's license was suspended under Transportation Code §521.372. Such educational program must be equivalent to an educational program approved by the Texas Department of Licensing and Regulation (TDLR) under Texas Government Code Chapter 171. The proposed new rule is required for the qualification and approval of equivalent education programs required by Texas Transportation Code §521.374(a-1).

SECTION-BY-SECTION SUMMARY

Proposed new §564.39 outlines the substance misuse educational program requirements that a residential CDTF may use as an equivalent program to an educational program approved by TDLR under Texas Government Code Chapter 171.

Subsection (a) of the rule outlines the purpose of this rule section is to establish requirements for an educational program on the dangers of substance misuse.

Subsection (b) of the rule establishes that the educational program in this section is equivalent to an educational program approved by TDLR.

Subsection (c) of the rule allows a CDTF to provide the educational program under this section either in person or online.

Subsection (d) of the rule requires the curriculum for an educational program provided under this section to include at least the listed 15 key elements.

Subsection (e) of the rule requires a CDTF that provides an online version of an educational program under this section to comply with Texas Administrative Code Title 26 §564.911, relating to Treatment Services Provided by Electronic Means.

Subsection (f) of the rule requires a CDTF that provides an in-person version of an educational program under this section to conduct the course at the CDTF's physical location.

Subsection (g) of the rule requires a CDTF to make provisions for residents who are unable to read or speak English and requires the CDTF to offer separate courses for each language.

Subsection (h) of the rule outlines the requirements for an individual to serve as an instructor.

Subsection (i) of the rule requires a single instructor to teach the entire course and document all information related to the resident completing the course in the resident's client record.

Subsection (j) of the rule outlines the requirements an instructor must follow when providing an educational program under this section.

Subsection (k) of the rule requires the educational program to consist of at least 15 hours of class instruction per course and five class modules of instruction per course.

Subsection (l) of the rule requires a CDTF to create, issue, and maintain a record of certificates of completion. The proposed new subsection also outlines the minimum formatting requirements and outlines the informational requirements a certificate of completion must contain.

Subsection (m) of the rule clarifies that HHSC may determine compliance with this section during an inspection or investigation of a CDTF that offers an educational program described by this section.

Subsection (n) of the rule notes HHSC and the Department of Public Safety must jointly adopt rules for the qualification and approval of an educational program a CDTF provides under this section and states HHSC will solicit input from the Texas Department of Public Safety during the rulemaking process.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, 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 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 proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices. Providing an educational program under this section is optional and those who choose to provide the program are required to comply with the law as amended by H.B. 5183.

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 and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consistency between the CDTF rules and statutory requirements and greater access to more qualifying equivalent substance misuse educational programs for individuals whose licenses were suspended under Transportation Code §521.372.

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 providing the educational program under the proposed rule is optional and CDTFs who choose to provide the educational program are required to comply with the law as amended by H.B. 5183.

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 HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 24R016" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Transportation Code Chapter 521, which authorizes the executive commissioner of the Health and Human Services

Commission and the Texas Department of Public Safety to jointly adopt rules.

The new section implements Texas Government Code §531.0055 and Texas Transportation Code Chapter 521.

§564.39. Dangers of Substance Misuse Educational Program Requirements.

(a) The purpose of this section is to establish the requirements for an educational program on the dangers of substance misuse pursuant to Texas Transportation Code Chapter 521, Subchapter P.

(b) Pursuant to Texas Transportation Code §521.374(a)(2), a residential chemical dependency treatment facility (CDTF) may provide an educational program to a resident of that facility whose driver's license is suspended under Texas Transportation Code §521.372. The facility must meet all requirements in this section for the CDTF's educational program to be considered equivalent under Texas Transportation Code §521.374(a)(2) to an educational program approved by the Texas Department of Licensing and Regulation under Texas Government Code Chapter 171.

(c) A CDTF that provides an educational program under this section may provide the educational program in person or online.

(d) The curriculum for an educational program provided under this section shall include at least the following key elements:

(1) Texas drug laws, including laws and penalties relating to controlled substances and the difference between state and federal statutes;

(2) history of substance misuse, including trends in the history of substance misuse and how substances impact individuals and society;

(3) stages of change, including how individuals integrate new behaviors and goals through five stages of change;

(4) substance misuse and the impact on physical health;

(5) physical health, human immunodeficiency virus (HIV), and sexually transmitted infections;

(6) community resources, including referrals to counseling, services that support the person's recovery, and testing;

(7) brain and the central nervous system;

(8) disease model of substance use disorder (mild, moderate, and severe);

(9) society and substance misuse, including how advertising, movies, and television influence substance misuse trends;

(10) Maslow's hierarchy of needs, including understanding basic human needs and how substance misuse impacts a person's ability to meet personal needs;

(11) substance misuse and its impact on personal and work relationships;

(12) personal values, attitude, and behavior;

(13) recovery, including treatment and community-based support programs or services;

(14) return to use prevention; and

(15) recovery plan.

(e) A CDTF that provides an online version of an educational program under this section shall comply with §564.911 of this chapter (relating to Treatment Services Provided by Electronic Means).

(f) A CDTF that provides an in-person version of an educational program under this section shall conduct the educational program's course at the CDTF's physical location.

(g) The CDTF shall make provisions for residents unable to read or speak English. The facility shall provide separate courses in English and in a second language(s) appropriate to the population(s) served at the CDTF.

(h) To serve as an instructor of an educational program under this section, an individual must be an employee of the CDTF and must have a minimum of two years of relevant and documented experience providing direct client services to persons with substance misuse problems and serve as one of the following:

(1) licensed chemical dependency counselor;

(2) registered counselor intern;

(3) licensed social worker;

(4) licensed professional counselor;

(5) licensed professional counselor intern;

(6) certified teacher;

(7) licensed psychologist;

(8) licensed physician or psychiatrist;

(9) probation or parole officer;

(10) adult or child protective services worker;

(11) licensed vocational nurse; or

(12) licensed registered nurse.

(i) A single instructor shall teach the entire course. The instructor shall document all information related to the resident participating and completing the course. The CDTF shall insure all course documentation is placed in the resident's client record.

(j) The instructor shall:

(1) require participants to complete all the class modules within the course in the proper sequence;

(2) administer and evaluate pre-course and post-course program test instruments for each participant;

(3) administer a participant course evaluation at the end of each course; and

(4) conduct an exit interview with each participant.

(k) Each educational program shall include at least:

(1) 15 hours of class instruction per course; and

(2) five class modules of instruction per course.

(l) In order for the Texas Department of Public Safety (DPS) and Texas Health and Human Services Commission (HHSC) to accept a certificate as valid, the CDTF shall use the standardized certificate format described in this subsection.

(1) The CDTF shall create and issue a certificate of completion to a resident on the resident's participation in and successful completion of the educational program. The CDTF shall maintain an ascending numerical accounting record of all issued certificates.

(2) The certificate issued by the CDTF for completion of the education program under this section shall use the following format and, at minimum, consist of the following:

(A) The CDTF shall create a certificate that:

(i) is 8.5 inches wide and 3.5 inches long;

(ii) consists of a blue background color; and

(iii) aside from the required handwritten signature, consists only of a typed 12-point font that is legible and easy to read.

(B) The CDTF shall include on the left side of the certificate:

(i) the resident's:

(I) full name;

(II) date of birth;

(III) driver license number;

(IV) address; and

(V) offense cause number;

(ii) the name of the county that convicted the resident; and

(iii) the date the resident successfully completed the educational program under this section.

(C) The CDTF shall include on the right side of the certificate:

(i) the CDTF's:

(I) full name as it appears on the facility's license, including any headquarters or Assumed Name or Doing Business As names;

(II) address;

(III) phone number; and

(IV) residential facility license number;

(ii) the instructor's printed full name and signature; and

(iii) the date of the instructor's signature.

(D) The CDTF shall include a serial number unique to each certificate issued in the top right corner of the certificate. When creating certificate serial numbers, the CDTF shall use consecutive serial numbers and issue certificates to residents in consecutive order.

(3) The CDTF shall maintain a copy of each issued certificate of program completion for at least three years from the date of course completion.

(m) An HHSC representative may determine compliance with this section during an inspection or investigation of a CDTF that offers an educational program under this section.

(n) In accordance with Transportation Code §521.375(a-1), HHSC and DPS are responsible for jointly adopting rules for qualification and approval of an educational program a CDTF provides under this section. For any proposed changes to the rules outlined in this section, HHSC solicits input from DPS during the rulemaking process.

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

Filed with the Office of the Secretary of State on July 17, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 834-4591

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §331.11 and §331.132.

Background and Summary of the Factual Basis for the Proposed Rules

This proposed rulemaking implements Senate Bill (SB) 786 and SB 1186, 88th Texas Legislature, 2023, addressing agency jurisdiction over regulation of closed-loop geothermal injection wells and agency jurisdiction over brine injection wells in Texas. SB 786 confers the Railroad Commission of Texas (RRC) with jurisdiction over the regulation of closed-loop geothermal injection wells. SB 1186 confers the RRC with jurisdiction over the regulation of brine mining and the injection wells used for brine mining.

This proposed rulemaking implements SB 786 by amending the commission's underground injection control rules to remove requirements for the regulation of closed-loop geothermal injection wells. Prior to the enactment of SB 786, the commission's underground injection control rules included geothermal closed-loop injection wells as a type of Class V injection well under the jurisdiction of the commission. SB 786 provides that all commission functions and activities that relate to the regulation of closed-loop geothermal injection wells are transferred to the RRC. The RRC plans to implement SB 786 through adoption of their own rules relating to Class V closed-loop geothermal injection wells.

The proposed rulemaking implements SB 1186 by amending the commission's underground injection control rules to acknowledge that the RRC has jurisdiction over the regulation of Class V injection wells used for brine mining. SB 1186 defines "brine mining" as the "production of brine, including naturally occurring brine and brine extracted by the solution of a subsurface salt formation, for the purpose of extracting from a subsurface formation elements, salts, or other useful substances...." SB 1186 defines a "Class V brine injection well" as "a well that injects spent, naturally occurring brine produced by a brine mining operation into the same formation from which it was withdrawn after extraction of elements, salts or other useful substances, including halogens or halogen salts."

Section by Section Discussion

The commission proposes to amend 30 TAC §331.11 by removing subsection (a)(4)(B), which states "closed loop injection wells which are closed system geothermal wells used to circulate fluids including water, water with additives, or other fluids or gases through the earth as a heat source or heat sink;" and re-lettering the remainder of the paragraph. The proposed amendment to remove §331.11(a)(4)(B) implements Texas Water Code (TWC),

§27.037 as established in SB 786 by removing the inclusion of closed-loop geothermal injection wells as a type of Class V injection well for which the commission has jurisdiction.

The commission proposes to amend 30 TAC §331.11(b) to implement SB 786, SB 1186 and provisions of TWC, Chapter 27. The commission proposes to amend §331.11(b) to identify certain types of injection wells for which the RRC has jurisdiction to regulate. Under TWC §27.011, the commission has jurisdiction over the regulation of injection wells unless the activity is subject to the jurisdiction of the RRC. The commission has jurisdiction over the Class III injection wells classified in 30 TAC §331.11(a)(2) and the Class V injection wells classified in TAC §331.11(a)(4). The RRC has jurisdiction to regulate Class II injection wells under TWC, §27.031 and §27.0511. The RRC has jurisdiction over Class III and Class V injection wells used for brine mining as established in TWC, §27.036 and SB 1186. The RRC has jurisdiction over injection wells used for in situ recovery of tar sands as established in TWC, §27.035. The RRC has jurisdiction over injection wells used for the exploration, development or production of geothermal energy, including closed-loop geothermal injection wells, as established in Texas Natural Resources Code Chapter 141, TWC, §27.037, and SB 786. The RRC has jurisdiction over the injection and geologic storage of carbon dioxide as established in TWC, §27.041.

The commission proposes to amend 30 TAC §331.132(d)(3) by correcting a typographical error, changing "...close loop..." to "...closed loop...." References to closed-loop injection wells in §331.132 would apply to other types of closed-loop injection systems but not closed-loop geothermal injection wells regulated by the RRC.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule. Programs described in this rulemaking that are transferring from TCEQ to RRC have heretofore been implemented with minimal resources at TCEQ.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance with state law, specifically SB 786 and SB 1186 from the 88th Regular Legislative Session (2023). Moving the regulatory authority over closed-loop geothermal injection wells from TCEQ to RRC would result in efficiencies for producers of geothermal energy because the jurisdiction would be moved solely under the regulatory authority of RRC. Similarly, the rulemaking would move the regulation of in situ brine mining solely under the authority of RRC, and this would result in a more streamlined and efficient permitting process for the regulated community. The proposed rulemaking is not anticipated to result in fiscal implications for individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking transfers government programs from TCEQ to RRC. It will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation; and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The proposed amendments implement state legislation that confers RRC with jurisdiction over certain types of injection wells and activities. The proposed rules remove commission requirements for the regulation of closed-loop geothermal injection wells and recognizes the RRC as the regulatory agency for the regulation of closed-loop geothermal injection wells and Class V brine mining injection wells. The proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed

a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments do not exceed an express requirement of state law or a requirement of a delegation agreement. These rules were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments in Chapter 331 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. The proposed amendments to Chapter 331 remove requirements for closed-loop geothermal injection wells and recognize RRC jurisdiction over certain injection well activities. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on August 29, 2024, at 10:00 a.m. in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, August 27, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, August 28, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzEyYjA0ZDYtNDBjNC00MTEyLWIxMDctZGZiYzZiZGJiYTll%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search.* File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-020-331-WS. The comment period closes on September 3, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Dan Hannah, Radioactive Materials Division, Underground Injection Control Permits Section at (512) 239-2161.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.11

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and §27.019, which authorizes the commission to adopt rules for the performance of its powers, duties, and functions under the Injection Well Act.

The proposed rules implement Senate Bill (SB) 786 and SB 1186, 88th Texas Legislature, 2023; TWC, §§27.011; 27.031; 27.035; 27.036; 27.037; 27.041; and 27.0511.

§331.11. Classification of Injection Wells.

(a) Injection wells within the jurisdiction of the commission are classified as follows.

(1) Class I:

(A) wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells;

(B) other industrial and municipal waste disposal wells which inject fluids beneath the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water (USDW); and

(C) radioactive waste disposal wells which inject fluids below the lower-most formation containing a USDW within 1/4 mile of the wellbore.

(2) Class III. Wells which are used for the extraction of minerals, including:

(A) mining of sulfur by the Frasch process; and

(B) solution mining of minerals which includes sodium sulfate, sulfur, potash, phosphate, copper, uranium and any other minerals which can be mined by this process.

(3) Class IV. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within 1/4 mile of the wellbore contains a USDW.

(4) Class V. Class V wells are injection wells not included in Classes I, II, III, or IV. Generally, wells covered by this paragraph inject nonhazardous fluids into or above formations that contain USDWs. Except for Class V wells within the jurisdiction of the Railroad Commission of Texas, all Class V injection wells are within the jurisdiction of the commission and include, but are not limited to:

(A) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

[~~(B) closed loop injection wells which are closed system geothermal wells used to circulate fluids including water, water with additives, or other fluids or gases through the earth as a heat source or heat sink;~~]

(B) [~~(C)~~] large capacity cesspools or other devices that receive greater than 5,000 gallons of waste per day, which have an open bottom and sometimes have perforated sides;

(C) [~~(D)~~] cooling water return flow wells used to inject water previously used for cooling;

(D) [~~(E)~~] drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(E) [~~(F)~~] drywells used for the injection of wastes into a subsurface formation;

(F) [~~(G)~~] recharge wells used to replenish the water in an aquifer;

(G) [~~(H)~~] salt water intrusion barrier wells used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(H) [~~(I)~~] sand backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines;

(I) [~~(J)~~] septic systems designed to inject greater than 5,000 gallons per day of waste or effluent;

(J) [~~(K)~~] subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(K) [~~(L)~~] wells used for the injection of water for storage and subsequent retrieval for beneficial use as part of an aquifer storage and recovery project;

(L) [~~(M)~~] motor vehicle waste disposal wells which are used or have been used for the disposal of fluids from vehicular repair or maintenance activities, such as an automotive repair shop, auto body shop, car dealership, boat, motorcycle or airplane dealership, or repair facility;

(M) [~~(N)~~] improved sinkholes;

(N) [~~(O)~~] aquifer remediation wells, temporary injection points, and subsurface fluid distribution systems used to inject nonhazardous fluids into the subsurface to aid in the remediation of soil and groundwater; and

(O) [~~(P)~~] subsurface fluid distribution systems.

(b) The Railroad Commission of Texas has jurisdiction over: Class II injection wells; Class III and Class V injection wells used for brine mining; injection wells used for the in situ recovery of tar sands; injection wells used for the exploration, development or production of geothermal energy, including closed-loop geothermal injection wells; and the injection and geologic storage of carbon dioxide. [~~Class II wells and Class III wells used for brine mining fall within the jurisdiction of the Railroad Commission of Texas.~~]

(c) Baseline wells and monitor wells associated with Class III injection wells within the jurisdiction of the commission are also subject to the rules specified in this chapter.

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 July 19, 2024.

TRD-202403195
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER H. STANDARDS FOR CLASS V WELLS

30 TAC §331.132

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and §27.019, which authorizes the commission to adopt rules for the performance of its powers, duties, and functions under the Injection Well Act.

The proposed rules implement Senate Bill (SB) 786 and SB 1186, 88th Texas Legislature, 2023; and TWC, §§27.011, 27.031, 27.035, 27.036, 27.037, 27.041, and 27.0511.

§331.132. Construction Standards.

(a) Applicability. All Class V wells shall be completed in accordance with the specifications contained in this section, unless otherwise authorized by the executive director. Injection wells listed in Texas Occupations Code, §1901.001(8) shall be installed by a water well driller licensed by the Texas Department of Licensing and Regulation.

(b) Reporting.

(1) Prior to construction. Except for closed loop injection and air conditioning return flow wells, information required under §331.10(a) of this title (relating to Inventory or Wells Authorized by Rule) shall be submitted to the executive director for review and approval prior to construction. For large capacity septic systems, septic systems that accept industrial waste, and subsurface fluid distribution systems including subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions), the information required under §331.10(a) of this title shall be submitted as part of the wastewater discharge permit application filed under Chapter 305 of this title (relating to Consolidated Permits).

(2) After completion of construction. Except for large capacity septic systems, subsurface fluid distribution systems, temporary injection points, closed loop injection wells, improved sinkholes, and air conditioning return flow wells, the Texas Department of Licensing and Regulation state well report form shall be submitted to the executive director within 30 days from the date the well construction is completed.

(3) Closed loop and air conditioning return flow wells. No reporting prior to construction is necessary for these two types of wells. The Texas Department of Licensing and Regulation state well report form shall be completed and submitted to the executive director within 30 days from the date the well construction is completed. Any additives, constituents, or fluids (other than potable water) that are used in the closed loop injection well system shall be reported in the Water Quality Section on the state well report form.

(4) Temporary injection points. Temporary injection points shall be completed in such a manner as to prevent movement of surface water or undesirable groundwater into underground sources of drinking water.

(5) Large capacity septic systems, subsurface fluid distribution systems, and improved sinkholes. The owner or operator of large capacity septic systems, subsurface fluid distribution systems, and improved sinkholes must submit the well report form provided by the executive director within 30 days from the date well construction is completed.

(c) Sealing of casing.

(1) General. Except for closed loop injection wells, the annular space between the borehole and the casing shall be filled with cement slurry from ground level to a depth of not less than ten feet below the land surface or well head. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water-bearing strata.

(2) Closed loop injection well. The annular space of a closed loop injection well shall be backfilled to the total depth with impervious bentonite or a similar material. Where no groundwater or only one zone of groundwater is encountered, sand, gravel, or drill cuttings may be used to backfill up to 30 feet from the surface. The top 30 feet shall be filled with impervious bentonite. Alternative impervious materials may be authorized by the executive director upon request.

(d) Surface completion.

(1) With the exception of temporary injection points, subsurface fluid distribution systems, improved sinkholes, and large capacity septic systems, all wells must have a concrete slab or sealing block placed above the cement slurry around the well at the ground surface.

(A) The slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(B) The surface of the slab shall be sloped so that liquid will drain away from the well.

(2) For wells that use casing, the top of the casing shall extend a minimum of 12 inches above the original ground surface. The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(3) Closed loop injection wells which are completed below grade are exempt from the surface completion standards in this subsection. Pitless adapters may be used in closed [~~close~~] loop wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal; and

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(4) Temporary injection points shall be completed in such a manner as to prevent the movement of surface water or undesirable groundwater into underground sources of drinking water.

(e) Optional use of a steel or polyvinyl chloride (PVC) sleeve. If the use of a steel or PVC sleeve is necessary to prevent possible damage to the casing, the steel sleeve shall be a minimum of 3/16 inches in thickness or the PVC sleeve shall be a minimum of Schedule 80 sun-resistant and 24 inches in length, and shall extend 12 inches into the cement slurry.

(f) Well placement in a flood-prone area. All wells shall be located in areas not generally subject to flooding. If a well must be placed in a flood-prone area, it shall be completed with a watertight sanitary well seal to maintain a junction between the casing and injection tubing, and a steel sleeve extending a minimum of 36 inches above ground level and 24 inches below the ground surface shall be used. For the purpose of this subsection, a flood-prone area is defined as that area within the 100-year flood plain as determined on the Federal Emergency Management Agency (FEMA) Flood Hazard Maps for the National Flood Insurance Program. If FEMA has conducted a flood insurance study of the area, and has mapped the 50-year flood plain, then the smaller geographic areas within the 50-year boundary are considered to be flood-prone. Closed loop injection wells, improved sinkholes, and air conditioning return flow wells are exempt from the completion standards in this subsection.

(g) Other protection measures.

(1) Commingling prohibited. All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer containing fresh water.

(2) Undesirable groundwater. When undesirable groundwater, which is water that is injurious to human health and the environment or water that can cause pollution to land or other waters, is encountered in a Class V well, the well shall be constructed so that the undesirable groundwater is isolated from any underground source of drinking water and is confined to the zone(s) of origin.

(h) Sampling. For a Class V injection well, any required sampling shall be done at the point of injection, or as specified in a permit issued by the executive director.

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 July 19, 2024.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 239-2678

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER A. PRACTICE AND PROCEDURES
DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.6

The Comptroller of Public Accounts proposes amendments to §1.6, concerning service of documents on parties. The amendments update the mailing address of the Administrative Hearings Section, which has moved to Suite 14.301 of the George H.W. Bush Building at 1801 Congress Ave., Austin, Texas 78701.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings).

§1.6. Service of Documents on Parties.

(a) Service required. A party filing a contested case document shall also serve a copy on each party in accordance with §1.3 of this title (relating to Representation and Participation). When SOAH has jurisdiction, a party shall follow the SOAH Rules of Procedure. A party filing a document that is required to be served must include a certificate of service as described in this section. The sender has the burden of proving the date and time of service of a document.

(b) Methods of service. Service generally means sending or delivering a contested case document in order to charge a party with receipt of it and subject a party to its legal effect. Service may be made by the following methods:

(1) hand-delivery;

(2) regular (United States Postal Service or private mail service), certified, or registered mail;

(3) email, upon agreement of the parties; or

(4) if sent by a taxpayer or representative, fax.

(c) Service on interested parties. Interested parties admitted to a contested case pursuant to §1.24 of this title (relating to Interested Parties) shall also be served.

(d) Service on the AHS. Service on the AHS must be through the assigned Tax Hearings Attorney in the AHS. Service may be made as provided in paragraphs (1) and (2) of this subsection.

(1) Hand-delivery. The file stamp affixed by the AHS will be the date of service for hand-delivered documents. Hand-delivered documents must be addressed to Texas Comptroller of Public Accounts, Administrative Hearings Section, 1800 Congress Avenue, Suite 14.301, Austin, Texas 78701-1320 [~~1700 N. Congress Avenue, Suite 320, Austin, Texas 78701-1436~~].

(2) Delivery by methods other than hand-delivery. The service date of a document filed by mail is determined by the date-stamp affixed by the comptroller's mail room. Documents served by fax or email are considered served on a date when they are received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and documents received on a day on which the agency is closed are considered filed on the next calendar day on which the agency is open.

(e) Certificate of service. A party filing a document that must be served shall include a signed certificate of service with the filed document that certifies compliance with this section. A form for a certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on (date), a true and correct copy of this (name of document) has been sent to (name of taxpayer's designated representative for notice or assigned Tax Hearings Attorney) by (specify method of delivery and delivery address). (Signature)."

(f) Service of notice of hearing. Unless otherwise required by law, service of notice of hearing shall be made in the manner required by Government Code, Chapter 2001.

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 July 22, 2024.

TRD-202403209
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 475-2220

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34 TAC §1.10

The Comptroller of Public Accounts proposes amendments to §1.10, concerning requesting a hearing. The amendments update the mailing addresses for the Audit Division and the Administrative Hearings Section, both of which moved to the George H.W. Bush Building at 1801 Congress Ave., Austin, Texas 78701.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings).

§1.10. Requesting a Hearing.

(a) Requesting a redetermination hearing.

(1) If a taxpayer disagrees with a deficiency or jeopardy determination, the taxpayer may request a redetermination hearing by timely submitting a written request for redetermination. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.11 of this title (relating to Statement of Grounds; Preliminary Conference).

(2) The request for a redetermination hearing must be submitted before the expiration of 60 days after the date the notice of determination is issued, or before the expiration of 20 days after the statement date on the notification of a jeopardy determination. A request for a redetermination hearing that is not timely submitted will not be granted. An extension of time for initiating a redetermination hearing may be requested subject to the requirements of subsection (c) of this section. A taxpayer who cannot obtain a redetermination hearing may pay the determination and request a refund in order to raise any objection to the determination.

(3) The request for redetermination and Statement of Grounds must be timely submitted to the agency's Audit Processing Section by one of the following methods:

(A) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Audit Processing Section, 1801 Congress Avenue, Suite 14.300, Austin, Texas 78701-1320 [~~111 E. 17th Street, Austin, Texas 78774-0100~~];

(B) by email to audit.processing@cpa.texas.gov; or

(C) by fax to (512) 463-2274.

(4) Required documentary evidence following request for redetermination hearing. After a taxpayer timely requests a redetermination hearing, the agency may request in writing that the taxpayer produce documentary evidence for inspection that would support the taxpayer's Statement of Grounds. The written request may specify that resale or exemption certificates to support tax-free sales must be submitted within 90 days from the date of the request, or by the date agreed to by the comptroller and the seller. Pursuant to Tax Code, §151.054 and §151.104, resale or exemption certificates that are not submitted within the time limit will not be accepted as evidence to support a claim of tax-free sales by the ALJ in SOAH proceedings.

(b) Requesting a refund hearing.

(1) If a taxpayer disagrees with the agency's denial of a refund claim, the taxpayer may request a refund hearing by timely submitting to the agency a written request for a refund hearing. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.11 of this title and Tax Code, §111.104 and §111.105.

(2) The request for a refund hearing must be filed on or before the 60th day after the date the comptroller issues a letter denying the claim for refund. A request for a refund hearing that is not timely submitted will not be granted. An extension of time for initiating a refund hearing may be requested subject to the requirements of subsection (c) of this section.

(3) The request for a refund hearing and Statement of Grounds must be timely submitted to the agency's Audit Processing Section by one of the following methods:

(A) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Audit Processing Section, 1801 Congress Avenue, Suite 14.300, Austin, Texas 78701-1320 [~~111 E. 17th Street, Austin, Texas 78774-0100~~];

(B) by email to audit.processing@cpa.texas.gov; or

(C) by fax to (512) 463-2274.

(4) A refund hearing will not be granted if neither the original request for a refund, nor the Statement of Grounds accompanying a request for a refund hearing, state grounds on which a refund may be granted.

(5) A taxpayer may not subsequently maintain a suit for refund if a refund claim is denied and the taxpayer does not timely request a hearing. See Tax Code, §111.104 and §112.151.

(c) Timely submission of the hearing request.

(1) A hearing request submitted by mail is considered submitted by the date-stamp affixed by the agency mail room.

(2) A hearing request submitted by hand-delivery is considered submitted on the date received by agency staff.

(3) A hearing request that is submitted electronically is considered submitted on a date when it is received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and a hearing request received on a day the agency is closed is considered filed on the next calendar day on which the agency is open. The date of receipt shall be determined by the time and date stamp recorded on the electronic transmission by the agency's system.

(d) Extensions of time for initiating hearing process. Requests to extend the due date for requesting a hearing under this section may be granted in case of emergency or extraordinary circumstances. Requests for extension will not be routinely granted. Requests received after the expiration of the original due date will not be considered. Requests will be granted or denied by the General Counsel of the Hearings and Tax Litigation Division of the agency, and must be submitted by one of the following methods:

(1) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Administrative Hearings Section, 1801 Congress Avenue, Suite 14.301, Austin, Texas 78701-1320 [~~1700 N. Congress Ave., Suite 320, Austin, Texas 78701-1436~~];

(2) by email to ahs.service@cpa.texas.gov; or

(3) by fax to (512) 463-4617.

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 July 22, 2024.

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Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 475-2220

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34 TAC §1.35

The Comptroller of Public Accounts proposes amendments to §1.35, concerning motion for rehearing. The amendments implement Senate Bill 903, 87th Legislature, 2021 and House Bill 2080, 87th Legislature, 2021.

Subsection (a) is amended to implement Senate Bill 903, which enacted Tax Code, §111.106 (Tax Refund: Notice of Intent to Bypass Hearing). Effective September 1, 2021, a taxpayer who files a notice of intent to bypass the refund hearing, and who either participates in a conference with a designated comptroller employee or is excused from participation in such a conference by the comptroller, may file suit in district court. The last sentence in subsection (a), providing that a motion for rehearing is a prerequisite for a tax refund lawsuit, is therefore an incomplete statement of the law and is deleted.

Subsection (b) is amended to implement House Bill 2080, which enacted Tax Code, Chapter 112, Subchapter E, (Suit After Redetermination). New paragraph (3) references Tax Code, §112.201(a) and states that a motion for rehearing of a redetermination must identify the disputed amounts associated with the grounds of error raised. Current paragraph (3) is renumbered as paragraph (4) and non-substantive changes are made to mirror the syntax of the new subsection.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.106 (Tax Refund: Notice of Intent to Bypass Hearing) and Tax Code, §112.201 (Suit After Redetermination).

§1.35. Motion for Rehearing.

(a) Definition. A motion for rehearing is a request to the comptroller from a party in a contested case to reconsider part or all of a decision or order. The motion may or may not result in an additional hearing. [~~A motion for rehearing is a prerequisite for a tax refund lawsuit.~~]

(b) Contents of a motion for rehearing.

(1) Government Code, §2001.146(g) provides that a motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous.

(2) Government Code, §2001.146(g) further provides that a motion for rehearing must also state the legal and factual basis for the claimed error.

(3) Tax Code, §112.201(a) requires a motion for rehearing of a redetermination to identify the disputed amounts associated with the grounds of error raised.

(4) [~~(3)~~] Tax Code, §111.105(d) requires [~~further provides that~~] a motion for rehearing on a tax refund claim to [~~must~~] assert each specific ground of error and state the amount of the refund sought.

(c) Deadline to file a motion for rehearing. A motion for rehearing must be filed no later than 25 days after the comptroller's decision is signed. The comptroller will state the 25-day deadline to file a motion for rehearing on the first page of the comptroller's decision. For contested case purposes, the comptroller will consider a motion for rehearing timely if it is filed by the motion for rehearing deadline stated on the comptroller's decision.

(d) Additional time to file a motion for rehearing.

(1) Motion for extension of time. A motion to extend the time to file a motion for rehearing or reply must be filed with the Office of Special Counsel for Tax Hearings in accordance with §1.5 of this title (relating to Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings) no later than five days after the deadline to file the motion or reply. Government Code, §2001.146(e) gives the comptroller the authority to act on the motion not later than the 10th day after the original deadline. If a motion is timely and properly filed, the comptroller shall issue an order granting or denying the motion. If the comptroller has not timely acted on the motion, the motion is considered overruled.

(2) Failure to receive notice. Government Code, §2001.142 establishes a procedure to revise the motion for rehearing period if a party did not receive notice or acquire actual knowledge of a signed decision before the 15th day after the date the decision is signed. A party may file a sworn motion to revise the period for filing a motion for rehearing. The motion must be filed with the Office of Special Counsel for Tax Hearings in accordance with §1.5 of this title. If the comptroller does not issue an order granting or denying the motion by the 10th day after the motion is received, the motion is considered granted by operation of law.

(e) Calculation of due dates. Refer to §1.4 of this title (relating to Computation of Time) for guidance related to the calculation of due dates.

(f) Determining the date that a document is filed. Refer to §1.5 of this title for guidance related to determining the date a document is filed.

(g) Filing information for the Office of Special Counsel for Tax Hearings. The motions and replies described in this section must be filed with the Office of Special Counsel for Tax Hearings, in accordance with the requirements set out in §1.5 of this title.

(h) Requirement to serve other parties. A copy of the motion or reply must be sent to other parties on the same date the motion or reply is filed with the Office of Special Counsel for Tax Hearings. Refer to §1.6 of this title (relating to Service of Documents on Parties) for additional guidance.

(i) Reply to a motion for rehearing. A party may file a reply to a motion for rehearing, but a reply is not required. The reply must be filed no later than the 40th day after the date the decision is signed.

(j) Action on a motion for rehearing.

(1) The comptroller is not required to act on a motion for rehearing. If the comptroller does not timely act to grant the motion for rehearing, the motion for rehearing is overruled by operation of law the 55th day after the decision was signed. If the comptroller grants an extension to file a motion for rehearing and does not timely act to grant the motion for rehearing, the motion for rehearing is overruled by operation of law the 100th day after the decision was signed.

(2) If the comptroller acts on a motion for rehearing, the comptroller will send a written order granting or denying a rehearing to each party's designated representative for notice. An order granting a motion for rehearing may or may not include the comptroller's decision upon rehearing.

(k) Finality. If a motion for rehearing is overruled, whether by order or operation of law, the comptroller's decision is final on the date the motion is overruled.

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 July 22, 2024.

TRD-202403211
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 1, 2024
For further information, please call: (512) 475-2220