

# PROPOSED RULES

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

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

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

##### DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

###### 1 TAC §354.1430, §354.1434

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

###### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Government Code §531.001(4-a) and §531.02164, amended by House Bill (H.B.) 2727, 88th Legislature, Regular Session, 2023.

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

###### SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1430, Definitions, adds a new definition for the term "Federally qualified health center" in paragraph (4), "Home telemonitoring service" in paragraph (5), "hospital" in paragraph (6), and "Rural health clinic" in paragraph (10). As part of the "Home telemonitoring service" definition in paragraph (4), the proposed language clarifies that the term is synonymous with "remote patient monitoring". The proposed amendment renumbers the paragraphs because of the addition of the new terms.

The proposed amendment to §354.1434, Home Telemonitoring Benefits and Limitations, in subsection (b), adds a FQHC and RHC as providers of home telemonitoring services. The pro-

posed amendment adds a new paragraph (4) in subsection (c) to require home telemonitoring providers to establish a plan of care with outcome measures for each recipient and, in new paragraph (5), to share the plan of care with the recipient's physician. The proposed amendment in subsection (d)(1), in the eligibility criteria for recipients, replaces "feasible" with "clinically effective". This change is needed to be consistent with the language used in Texas Government Code §531.02164(c)(1). The proposed amendment in subsection (d)(2) replaces "two or more" with "at least one." This change to reduce the home telemonitoring services eligibility criteria for recipients from two or more risk factors to at least one risk factor implements the requirement in Texas Government Code §531.02164(c)(2)(B). The proposed amendment in subsection (d)(2)(D) changes a risk factor to "a documented risk of falls" by removing "in the prior six month period; and removes the risk factor in (d)(2)(E) of "limited or absent informal support systems" and in (d)(2)(F) of "living alone or being home alone for extended periods of time". These changes are needed to implement the requirements in Texas Government Code §531.02164(c)(2)(B). The proposed amendment removes subsection (e) relating to reimbursement and replaces it with a new subsection (g). This change is made to better organize the rule within the section and to improve the readability of the rule. The proposed amendment adds a new subsection (f) to set forth that HHSC may discontinue home telemonitoring services for a condition, if after implementation, HHSC determines the provision and reimbursement of services are not cost-effective and clinically effective for that condition. The proposed amendment makes a minor editing change in subsection (c), changing "service" to "services;" changes "patient's" to "recipient's" and "clients" to "recipients" as needed; updates the numbering of the paragraphs within subsections (c) and (d); removes "only" from subsection (d); and renumbers subsection (f) as subsection (e).

###### 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, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$238,802 for all funds in fiscal year (FY) 2025, \$236,270 in FY 2026, \$233,766 in FY 2027, \$231,288 in FY 2028, and \$228,836 in FY 2029.

Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

###### 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 rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will require an increase 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 increase the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rules' effect on 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, microbusinesses, or rural communities because participation in providing home telemonitoring services described in the proposed rule is optional.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased access to home telemonitoring services for eligible Medicaid recipients through federally qualified health centers and rural health clinics.

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 provision of home telemonitoring services by providers is optional.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHRulesCoordinationOffice@hhs.texas.gov](mailto:HHRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day

to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R039" in the subject line.

#### 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 requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021(c), which requires the executive commissioner to adopt rules necessary for the proper and efficient operation of the medical assistance program; and Texas Government Code §531.02164(b) requires the executive commissioner to adopt rules for the provision and reimbursement of home telemonitoring services under Medicaid as provided under Section 531.02164.

The amendments affect Texas Government Code §§531.0055, 531.001, and 531.02164.

#### §354.1430. Definitions.

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

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

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

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

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

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

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

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

(8) ~~[(5)]~~ Non-behavioral health service--Any health service that is not a behavioral health service.

(9) ~~[(6)]~~ Platform--This term has the meaning assigned by Texas Government Code §531.001(4-d).

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

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

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

#### §354.1434. Home Telemonitoring Benefits and Limitations.

(a) Home telemonitoring services are a benefit of the Texas Medicaid Program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (HHSC) or its designee.

(b) Home telemonitoring services require scheduled remote monitoring of data related to a recipient's [patient's] health and transmission of the data to a licensed home health agency, federally qualified health center, rural health clinic, or [a] hospital[, as those terms are defined by Texas Government Code §531.02164(a)].

(c) Home telemonitoring services [service] providers must:

(1) comply with all applicable federal, state, and local laws and regulations;

(2) be enrolled and approved for participation in the Texas Medicaid Program as home telemonitoring service providers;

(3) bill for services covered under the Texas Medicaid Program in the manner and format prescribed by HHSC;

(4) establish a plan of care that includes outcome measures for each recipient who receives home telemonitoring services;

(5) share the plan of care with the recipient's physician;

(6) [(4)] share clinical information gathered while providing home telemonitoring services with the recipient's [patient's] physician; and

(7) [(5)] not duplicate disease management program services provided under Human Resources Code §32.057 and further described in Division 32 of this subchapter (relating to Texas Medicaid Wellness Program).

(d) Home telemonitoring services are available [only] to Texas Medicaid recipients [clients] who:

(1) are diagnosed with diabetes, hypertension, or any other conditions allowed by Texas Government Code §531.02164 and determined by HHSC to be cost effective and clinically effective [feasible]; and

(2) exhibit at least one [~~two or more~~] of the following risk factors:

(A) two or more hospitalizations in the prior 12-month period;

(B) frequent or recurrent emergency room admissions;

(C) a documented history of poor adherence to ordered medication regimens;

(D) a documented risk [history] of falls [~~in the prior six-month period~~]; and

~~[(E) limited or absent informal support systems;]~~

~~[(F) living alone or being home alone for extended periods of time; and]~~

(E) [~~(G)~~] a documented history of care access challenges.

~~[(e) Home telemonitoring services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).]~~

(e) [(f)] Home telemonitoring services are available to Texas Medicaid recipients [clients] who are 20 years of age and younger, with one or more of the following conditions:

(1) end-stage solid organ disease;

(2) organ transplant recipient; or

(3) requiring mechanical ventilation.

(f) Home telemonitoring services may be discontinued for a condition, if after implementation, HHSC determines the provision and reimbursement of services are not cost-effective and clinically effective for that condition.

(g) HHSC reimburses home telemonitoring services providers in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

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 October 9, 2024.

TRD-202404805

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 438-4651



## CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM SUBCHAPTER B. PRESCRIBED PEDIATRIC EXTENDED CARE CENTER SERVICES

### 1 TAC §§363.203, 363.205, 363.207, 363.209, 363.211 - 363.213, 363.215

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §363.203, concerning Definitions; §363.205, concerning Provider Participation Requirements; §363.207, concerning Participant Eligibility Criteria; §363.209, concerning Benefits and Limitations; §363.211, concerning Service Authorization; §363.213, concerning Ordering Physician Responsibilities; §363.215, concerning Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services; and new §363.212, concerning Documentation Requirements for Services Other than Transportation Services.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Health and Safety Code, §248A.1015, §248A.158, and §248A.159, and Texas Human Resources Code, §32.0287, added or amended by House Bill (H.B.) 3550, 88th Legislature, Regular Session, 2023. H.B. 3550 requires rules establishing minimum standards for transportation services for individuals served by Prescribed Pediatric Extended Care Centers (PPECCs). H.B. 3550 also requires rules for the reimbursement of services provided by PPECCs under Medicaid to clearly identify the documentation that PPECCs must obtain and maintain for reimbursement.

The proposed rules establish minimum standards for transportation services when transporting participants to a PPECC by requiring a center to coordinate the schedule of transportation services with the participant's responsible adult, as defined in the rules; determining what type of provider needs to be present during transportation; and allowing the participant's responsible

adult to decline a center's transportation services entirely or on a specific date.

The proposed rules remove the requirement that the plan of care and the physician's order document a participant's need for transportation services as nursing services in a participant's plan of care.

The proposed rules update guidelines allowing participants who are eligible to receive authorized continuous skilled nursing service hours for private duty nursing (PDN) services, PPECC services, or a combination of both services with certain limitations. The proposed rules clarify that PPECC services must be a replacement of other skilled nursing services provided in a setting other than a PPECC unless additional nursing services are medically necessary.

The proposed rules establish and outline documentation requirements for admission to a PPECC and for non-transportation PPECC services for reimbursement eligibility. The proposed rules require a PPECC to include the documentation of PPECC services provided to a participant in the participant's medical record.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §363.203 adds a definition for "direct care staff" and amends the definitions of "Licensed Vocational Nurse (LVN)", "Registered Nurse (RN)", and "stable". The proposed amendment also revises certain definitions to correct spelling, allow use of an acronym for a term, and make other minor corrections.

The proposed amendment to §363.205 corrects the use of acronyms and updates the reference to the current Texas Administrative Code (TAC) to the Licensing Standards for Prescribed Pediatric Extended Care Centers.

The proposed amendment to §363.207 provides for a participant's ordering physician to waive the in-person examination of the participant required in subsection (a)(6) of the rule as long as the conditions described in the proposed rule are met. The proposed amendment replaces the criteria for a participant to be "stable and eligible for outpatient medical services" with "the participant meets the criteria in 26 TAC §550.601", the admission criteria in the licensing standards. The proposed amendment revises the participant eligibility criteria to improve the readability, makes minor edits, and renumbers subsections of the rule.

The proposed amendment to §363.209 updates provisions and transportation requirements for transporting a participant to a PPECC; clarifies staffing determinations on the transport vehicle; and outlines documentation requirements regarding transportation services. The proposed amendment adds that a participant who is eligible to receive PDN services may also receive PPECC services. The proposed amendment adds that a participant may choose to receive all authorized continuous skilled nursing services through PPECC only, PDN only, or a combination of both PPECC and PDN services with certain limitations. The proposed amendment adds that PDN, home health skilled nursing, home health aide services, and personal care services may be billed on the same day as PPECC services but may not be billed simultaneously with PPECC services.

The proposed amendment to §363.211 makes editorial changes to clarify the service authorization process for PPECC services; clarifies in subsection (d) of the rule that "days" means "calendar days;" spells out "managed care organization;" makes a correction in subsection (l) of the rule by adding "termination;" clarifies

a comprehensive nursing assessment is required no later than the day the participant is admitted to the center; and clarifies a revised nursing assessment is required when there are changes in the participant's medical condition that impact the amount or duration of services.

Proposed new §363.212 outlines the documentation requirements a PPECC must obtain and maintain in the participant's medical record to be eligible for reimbursement of non-transportation PPECC services. The proposed rule includes that HHSC may request documentation from the PPECC to substantiate the provision of services and may recoup payment if services are not substantiated as outlined in the rule.

The proposed amendment to §363.213 adds responsibilities and flexibilities for the ordering physician including examination of the participant when prescribing PPECC services and written requirements to ensure safe transport.

The proposed amendment to §363.215 makes editorial changes to adhere to HHS rulemaking guidelines; makes corrections in subsection (b) of the rule to add "terminate" or "termination" where needed; and clarifies in subsection (b)(3) of the rule that "days" means "calendar days."

#### 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 HHS system 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 the agency;
- (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) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities due to cost to comply.

Currently, there are 10 PPECCs in the State of Texas. However, HHSC lacks data and is unable to determine how many PPECCs are small businesses, microbusinesses, or rural communities. HHSC is proposing this rule in response to prescriptive legislation and has no regulatory flexibility about its proposal.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and 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 proposal will benefit PPECC providers, Medicaid participants, and their families by reducing the provider administrative burden and increasing access to care.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because PPECC providers will be required to coordinate transportation schedules, maintain transportation logs, and ensure that providers are on the transportation vehicle when transporting participants to and from the PPECC. The total costs cannot be estimated because HHSC lacks the data needed to estimate the costs and savings to be experienced.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R036 in the subject line.

#### STATUTORY AUTHORITY

The amendments and new section 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 Health & Safety Code §248A.1015, which provides that the Executive Commissioner shall by rule establish minimum standards for transportation services, including

reimbursement, by Prescribed Pediatric Extended Care Centers (PPECCs).

The amendments and new section implement Texas Health & Safety Code §248A.1015, §248A.158, and §248A.159, and Texas Human Resources Code, §32.0287.

#### §363.203. Definitions.

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

(1) Activities of daily living (ADLs)--Activities that include eating, toileting, personal hygiene, dressing, bathing, transferring, positioning, and locomotion or mobility.

(2) Basic services--Basic services include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent participant;

(ii) is developed in conjunction with the participant's responsible adult; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the participant; and

(B) the caregiver training needs of a medically dependent or technologically dependent participant's parent or responsible adult.

(3) Correct or ameliorate--To improve, maintain, or slow the deterioration of the participant's health status.

(4) Direct care staff--An employee or contractor of a PPECC who:

(A) works under the supervision of a registered nurse;

(B) provides direct care to a participant; and

(C) meets the qualifications described in 26 TAC §550.409(a) (relating to Direct Care Staff Qualifications).

(5) [(4)] Fair hearing--The process HHSC has adopted and implemented in Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules) in compliance with federal and state regulations governing Medicaid Fair Hearings.

(6) [(5)] HHSC--The Texas Health and Human Services Commission or its designee, including a contractor or MCO. HHSC is the single state agency charged with administration and oversight of the Texas Medicaid program. HHSC's authority is established in Texas Government Code Chapter 531.

(7) [(6)] Licensed vocational nurse [Vocational Nurse] (LVN)--An employee or contractor of a PPECC who is [A person] licensed by the Texas Board of Nursing to practice vocational nursing in [Texas at the time and place the service is provided, in] accordance with Texas Occupations Code Chapter 301.

(8) [(7)] Medicaid managed care organization [Managed Care Organization] (MCO)--Any entity with which HHSC contracts to provide Medicaid services and that complies with Chapter 353 of this title (relating to Medicaid Managed Care).

(9) [(8)] Medically or technologically dependent participant--

(A) An individual 20 years of age or younger:

(i) who has an acute or chronic medically complex or fragile condition or disability; and

(ii) whose condition or disability, as stated in clause (i) of this subparagraph, requires:

(I) ongoing skilled nursing care beyond the level of skilled nursing visits normally authorized under Texas Medicaid home health skilled nursing and home health aide services, prescribed by a physician to avert death or further disability; or

(II) the routine use of a medical device to compensate for a deficit in a life-sustaining bodily function.

(B) The term does not include a participant with a controlled or occasional medical condition that does not require ongoing nursing care.

(10) [(9)] Notice (or notification)--A letter provided by HHSC or an MCO to a participant informing the participant of any reduction, denial, or termination of a requested service, as described in the Code of Federal Regulations, Title 42, §§431.206 and 431.210.

(11) [(10)] Ordering physician--A doctor of medicine or doctor of osteopathy (M.D. or D.O.), legally authorized to practice medicine or osteopathy [at the time and place the service is provided,] who provides ongoing medical care for the participant and continuing medical supervision of the participant's plan of care.

(12) [(11)] Participant--An individual who is eligible to receive PPECC services under the Texas Health Steps Comprehensive Care Program [(THSteps-CCP)] from a provider enrolled in the Texas Medicaid program.

(13) [(12)] Plan of care (POC)--A written comprehensive, interdisciplinary protocol of care that includes the physician's order for needed services, nursing care plan, and protocols establishing delegated tasks, plans to address functional developmental needs, plans to address psychosocial needs, personal care services for assistance with activities of daily living, and therapeutic service needs required by a participant and family served.

(14) [(13)] PPECC [Prescribed Pediatric Extended Care Center (PPECC)]--Prescribed Pediatric Extended Care Center. A center operated on a for-profit or nonprofit basis that provides non-residential basic services to four or more medically dependent or technologically dependent participants who require the services of the center and who are not related by blood, marriage, or adoption to the owner or operator of the center.

(15) [(14)] Private Duty Nursing (PDN)--Nursing, as described by Texas Occupations Code Chapter 301, and its implementing regulations in [at] 22 TAC Part 11 (relating to the Texas Board of Nursing), that provides a participant with more individual and ongoing care than is available from a visiting nurse or than is routinely provided by the nursing staff of a hospital or skilled nursing facility. PDN services include observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings for a participant who has a disability or chronic health condition or who is experiencing a change in normal health processes.

(16) [(15)] Registered nurse [Nurse] (RN)--An employee or contractor of a PPECC [A person] who is licensed by the Texas Board of Nursing to practice professional nursing in [Texas at the time and place the service is provided, in] accordance with Texas Occupations Code Chapter 301.

(17) [(16)] Respite--Services provided to relieve a participant's primary care giver.

(18) [(17)] Responsible adult--An adult, as defined by Texas Family Code §101.003, who has agreed to accept the responsibility for providing food, shelter, clothing, education, nurturing, and supervision for a participant. Responsible adults include biological parents, adoptive parents, foster parents, guardians, court-appointed managing conservators, and other family members by birth or marriage. If the participant is 18 years of age or older, the responsible adult must be the participant's managing conservator or legal guardian.

(19) [(18)] Skilled nursing--Services provided by a registered nurse or by a licensed vocational nurse, as authorized by Texas Occupations Code Chapter 301 and 22 TAC §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct).

(20) [(19)] Stable--A status [Status] determined by a [the] participant's ordering physician that the participant's health condition does not prohibit utilizing transportation to access outpatient medical services and does not present significant risk to other participants or personnel at the center[; as defined at 40 TAC §15.601 (relating to Admission Criteria)]. The participant must be able to use transportation services offered by the PPECC with the assistance of a PPECC nurse to and from the PPECC, whether or not the participant uses the PPECC's transportation service[.].

(21) [(20)] Texas Health Steps Comprehensive Care Program (THSteps-CCP)--A federal program, required by Medicaid and known as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), for children under 21 years of age who meet certain criteria for eligibility. Services are defined in the United States Code, Title 42, §1396d(r), and the Code of Federal Regulations, Title 42, §440.40(b).

#### §363.205. Provider Participation Requirements.

(a) A PPECC service provider must be independently enrolled in the Texas Medicaid program to be eligible to receive Medicaid reimbursement for providing PPECC services through the Texas Health Steps Comprehensive Care Program (THSteps-CCP) [THSteps-CCP].

(b) To participate in THSteps-CCP, a PPECC service provider must:

(1) be currently licensed under and comply with 26 [40] TAC Chapter 550 [45] (relating to Licensing Standards for Prescribed Pediatric Extended Care Centers);

(2) be enrolled and approved for participation in the Texas Medicaid program;

(3) agree to provide services in compliance with all applicable federal, state, and local laws and regulations, including Texas Occupations Code Chapter 301;

(4) comply with the terms of the Texas Medicaid Provider Agreement;

(5) comply with all state and federal regulations and rules relating to the Texas Medicaid program;

(6) comply with the requirements of the Texas Medicaid Provider Procedures Manual, including all published updates and revisions and all handbooks, standards, and guidelines published by HHSC or a Medicaid managed care organization (MCO) [an (MCO)] with which the provider contracts [they contract];

(7) comply with accepted professional standards and principles of nursing practice;

(8) comply with Texas Family Code Chapter 261, and Texas Health and Safety Code Chapter 260A, concerning mandatory reporting of suspected abuse or neglect of children and adults with disabilities; and

(9) maintain written policies and procedures for obtaining consent for medical treatment for participants in the absence of the responsible adult that meet the standards of Texas Family Code §32.001.

§363.207. *Participant Eligibility Criteria.*

(a) A participant may be admitted to a PPECC if: ~~[All requests for PPECC services must be based on the current medical needs of a participant who meets the following admission criteria for a PPECC:]~~

(1) the participant is eligible for the Texas Health Steps Comprehensive Care Program (THSteps-CCP) ~~[THSteps-CCP];~~

(2) the participant is ~~[age]~~ 20 years of age or younger;

(3) the participant requires ongoing skilled nursing care and supervision and skilled observations, judgments, and therapeutic interventions all or part of the day to correct or ameliorate the participant's ~~[his or her]~~ health status, such that delayed skilled intervention is expected to result in:

- (A) deterioration of a chronic condition;
- (B) loss of function;
- (C) imminent risk to health status due to medical fragility; or
- (D) risk of death;

(4) the participant is considered to be ~~[a]~~ medically dependent or technologically dependent ~~[participant];~~

(5) the participant meets the criteria ~~[is stable and eligible for outpatient medical services]~~ in 26 ~~[accordance with 40]~~ TAC §550.601 ~~[\$15.601]~~ (relating to Admission Criteria);

(6) the participant has a physician's order prescribing ~~[prescription for each authorization period for]~~ PPECC services signed and dated by the ordering physician who has examined the participant in person within 30 calendar days prior to admission and reviewed all appropriate medical records, unless the physician waives this examination because the physician:~~;~~

(A) has already established a diagnosis for the participant;

(B) is providing continuing care and medical supervision to the participant; and

(C) has stated in writing that an examination of the participant 30 calendar days prior to admission is not medically necessary;

(7) the participant resides with the responsible adult and does not reside in a 24-hour inpatient facility, including a:

- (A) general acute hospital;
- (B) skilled nursing facility;
- (C) intermediate care facility; or

(D) special care facility, including sub-acute units or facilities for the treatment of acquired immune deficiency syndrome; and

(8) the PPECC has ~~[a]~~ consent for ~~[to the participant's]~~ admission to the PPECC signed and dated by the participant or by the participant's responsible adult.

(b) If a participant's ordering physician waives the examination of the participant in accordance with subsection (a)(6) of this section:

(1) the physician must examine the participant in person within 365 calendar days after the date of the participant's last examination; and

(2) the physician and PPECC must maintain documentation of the waived examination and the information described in subsection (a)(6) of this section in the participant's medical record.

(c) ~~[(b)]~~ THSteps-CCP participants are eligible for all medically necessary PPECC services that are required to meet the participant's documented needs.

(d) ~~[(e)]~~ Admission must be voluntary, based on the participant's, or the participant's responsible adult's choice for PPECC services.

(e) ~~[(d)]~~ An authorized admission for PPECC services is not intended to supplant the right to a Medicaid Private Duty Nursing [PDN] benefit, when medically necessary.

§363.209. *Benefits and Limitations.*

(a) Comprehensive plan of care (POC) and PPECC~~;~~ permissible ~~[PPECC]~~ services.

(1) ~~A~~ ~~[The]~~ PPECC must develop, implement, and monitor a comprehensive POC [plan of care] that:

(A) is provided to a medically dependent or technologically dependent participant;

(B) is developed in collaboration with the participant's ordering physician, responsible adult, and interdisciplinary team, as well as the participant's existing service providers as needed to coordinate care;

(C) specifies the following prescribed services needed to address the medical, nursing, psychosocial, therapeutic, dietary, functional, and developmental needs of the participant and the training needs of the participant's responsible adult:

- (i) skilled nursing;
- (ii) personal care services to assist with activities of daily living while in the PPECC;
- (iii) functional developmental services;
- (iv) nutritional and dietary services, including nutritional counseling;
- (v) occupational, physical and speech therapy;
- (vi) respiratory care;
- (vii) psychosocial services; and
- (viii) training for the participant's responsible adult associated with caring for a medically or technologically dependent participant;

(D) specifies whether the participant is stable as determined by the participant's ordering physician ~~[if transportation is needed];~~

(E) if the participant is stable, the participant's ordering physician, in collaboration with the PPECC, specifies one of the following to be on board the transport vehicle to assist the participant during transportation:

- (i) a registered nurse (RN);
- (ii) a licensed vocational nurse (LVN); or
- (iii) direct care staff;

(F) ~~[(E)]~~ is reviewed and revised for each authorization period of services per §363.211(d) ~~[subsection (d)]~~ of this subchapter ~~[section]~~ or more frequently as the ordering physician deems necessary;

(G) ~~[(F)]~~ is signed and dated by the participant's ordering physician;

(H) ~~[(G)]~~ is developed ~~[signed]~~ and established with ~~[dated by]~~ the participant or the participant's responsible adult;

(I) ~~includes~~ a nursing addendum signed by the participant or the participant's responsible adult;

(J) ~~[(H)]~~ meets additional requirements prescribed in ~~26 [40] TAC §550.607 [§15.607]~~ (relating to Initial and Updated Plan of Care); and

(K) ~~[(H)]~~ meets requirements contained in the Texas Medicaid Provider Procedures Manual.

(2) Transportation Services.

(A) ~~A [The]~~ PPECC must provide transportation of a participant to and from ~~[between the participant's residence and]~~ the PPECC when: ~~[a participant has a stated need or prescription for such transportation.]~~

~~(i) the participant's ordering physician determines the participant is stable; and~~

~~(ii) the responsible adult wants the participant to receive transportation.~~

(B) When a PPECC provides transportation for ~~[to]~~ a ~~[PPECC]~~ participant, an RN, ~~[or]~~ LVN, or direct care staff, as determined ~~[employed]~~ by the participant's ordering physician in collaboration with the PPECC, must be on board the transport vehicle to assist the participant during transportation.

(C) ~~A [The]~~ PPECC must ensure that the driver and the RN, LVN, or direct care staff on board the transport vehicle maintain a daily transportation log that must include:

~~(i) the driver's name [sign, date, and indicate the time the participant is put on the transport vehicle to deliver the participant to the PPECC];~~

~~(ii) the name of the PPECC staff member and whether the staff member is an RN, LVN, or direct care staff;~~

~~[(iii) sign, date, and indicate the arrival time of the participant at the PPECC;]~~

~~(iii) the date;~~

~~[(iii) sign, date, and indicate the time the participant is put on the transport vehicle to return the participant to their place of residence; and]~~

~~(iv) the name of the participant;~~

~~[(iv) sign, date, and indicate the arrival time at the participant's residence.]~~

~~(v) the time the participant is put on the transport vehicle to deliver the participant to the PPECC;~~

~~(vi) the time the participant arrives at the PPECC;~~

~~(vii) the time the participant is put on the transport vehicle to return to the responsible adult or an adult authorized by the participant's responsible adult;~~

~~(viii) the time the participant arrives at the participant's return destination and the name of the person to whom the participant was released; and~~

~~(ix) for a participant who is in transport for longer than one hour traveling to the PPECC or for longer than one hour trav-~~

~~eling to their return destination, the reason that the transport time was longer than one hour.~~

~~(D) Payment for transportation services not substantiated by the documentation required in subparagraph (C) of this paragraph may be recouped.~~

~~(E) [(D)]~~ A responsible adult is not required to accompany a participant when the participant receives transportation services to and from the PPECC.

~~(E) [(E)]~~ A participant or participant's responsible adult may decline a PPECC's transportation services entirely, on a specific date, or for part of a specific date and choose to be transported by other means.

~~(G) [(F)]~~ A non-emergency ambulance may not be used for transport to and from a PPECC.

(3) PPECC services, including training provided to the participant's responsible adult associated with caring for a medically or technologically dependent participant, must be provided by the PPECC with the following intended outcomes:

(A) optimizing the participant's health status and outcomes; and

(B) promoting and supporting family-centered, community-based care as a component of an array of service options by:

~~(i) preventing prolonged or frequent hospitalizations or institutionalization;~~

~~(ii) providing cost-effective, quality care in the most appropriate environment; and~~

~~(iii) providing training and education of caregivers.~~

(4) ~~A [The]~~ PPECC must provide written documentation about a ~~[the]~~ participant's care each day to the participant's responsible adult, including documentation of medication given, services provided, and other relevant health-related information. ~~A PPECC must provide [The] documentation to the participant's responsible adult [must be provided] each day following service delivery when the responsible adult picks up the participant or when the PPECC transports the participant to the participant's return destination [his or her residence].~~

(5) For each day that PPECC services are provided, a ~~[the]~~ participant's medical record must identify the specific person, for example ~~[(e.g.), nursing, direct care staff, or therapist[.]]~~ providing services, the type of services performed, and the start and end times of services performed. ~~[The PPECC must be able to calculate the cost by practitioner and type of service provided as requested by HHSC.]~~

(b) Amount and duration.

(1) HHSC evaluates the amount and duration of PPECC services requested upon review of:

(A) a ~~physician's [physician]~~ order;

(B) a PPECC POC ~~[plan of care]~~;

(C) a completed request for authorization, including all required documentation, as indicated in the Texas Medicaid Provider Procedures Manual; and

(D) the full array of Medicaid services the participant is receiving at the time the plan of care is developed.

(2) HHSC re-evaluates the amount of PPECC services when:



(A) there is a change in the frequency of skilled nursing interventions, other PPECC medical services, or the complexity and intensity of the participant's care, or the authorized services are not commensurate with the participant's [s] medical needs and additional authorized hours are medically necessary;

(B) the participant or the participant's responsible adult chooses alternate resources for comparable care; or

(C) the responsible adult becomes available and is willing to provide appropriate care for the participant.

(c) PPECC service limitations.

(1) The Medicaid rate for PPECC services does not include a PPECC providing the following [PPECC] services:

(A) services intended to provide [~~mainly~~] respite care or child care, or services not directly related to the participant's medical needs or disability;

(B) services that are the legal responsibility of a local school district, including transportation;

(C) services covered separately by Texas Medicaid, such as:

(i) speech therapy, occupational therapy, physical therapy, respiratory care practitioner services, and early childhood intervention services;

(ii) durable medical equipment (DME), medical supplies, and nutritional products provided to the participant by Medicaid's DME and medical supply service providers; and

(iii) Private Duty Nursing (PDN) [~~private duty nursing~~], skilled nursing, and aide services provided in the home setting when medically needed in addition to the PPECC services authorized;

(D) baby food or formula;

(E) services to participants related to the PPECC owner by blood, marriage, or adoption;

(F) services rendered to a participant who does not meet the definition of a medically or technologically dependent participant; and

(G) individualized comprehensive case management beyond the service coordination required by the Texas Occupations Code Chapter 301.

(2) PPECC services are limited to 12 hours per day. Services begin when the PPECC assumes responsibility for the care of the participant (the point the participant is boarded onto PPECC transportation or when the participant is brought to the PPECC) and ends when the care is relinquished to the participant's responsible adult or an adult authorized by the participant's responsible adult.

(3) A participant who is eligible to receive PDN services may also receive PPECC services. A participant may choose to receive all authorized continuous skilled nursing service hours through PPECC services only, PDN services only, or a combination of both PPECC and PDN services. If a participant chooses to receive both PPECC and PDN services, the participant must not receive service hours in addition to what was initially authorized for PPECC and PDN, unless additional hours are medically necessary.

{(3) A participant who is eligible may receive both PDN and PPECC services on the same day. However, PPECC services are intended to be a one-to-one replacement of PDN hours unless additional hours are medically necessary. The following medically necessary services may be billed on the same day as PPECC services, but

they may not be billed simultaneously with PPECC services. These services may be billed before or after PPECC services;}

{(A) private duty nursing;}

{(B) home health skilled nursing; and}

{(C) home health aide services.}

(4) The following medically necessary services may be billed on the same day as PPECC services, but may not be billed simultaneously with PPECC services. These services may be billed before or after PPECC services:

(A) PDN;

(B) home health skilled nursing;

(C) home health aide services; and

(D) personal care services.

(d) Parental accompaniment is not required for PPECC services, including therapy services rendered in a PPECC setting.

*§363.211. Service Authorization.*

(a) Authorization is required for payment of services. A PPECC [The provider] must submit a complete request for prior authorization [in order] to be considered by HHSC for reimbursement. Prior authorization is a condition for reimbursement, but not a guarantee of payment.

(b) HHSC only authorizes [Only] those services that HHSC determines to be medically necessary and appropriate [are authorized].

(c) HHSC prior authorizes PPECC services [are prior authorized] with reasonable promptness. HHSC completes prior [Prior] authorization requests for PPECC services [determinations are completed by HHSC] within three business days of receipt of a complete request.

(d) Initial authorization may not exceed 90 calendar days from the start of care. Following the initial authorization, no authorization for payment of PPECC services may be issued for a single service period exceeding 180 calendar days. In addition, specific authorizations may be limited to a time period less than the established maximum based on factors such as the stability and predictability of the participant's medical condition.

(e) HHSC may deny or reduce the PPECC services when:

(1) the participant does not meet the medical necessity criteria for admission;

(2) the participant does not have an ordering physician;

(3) the participant is not 20 years of age or younger;

(4) the services requested are not covered under this subchapter;

(5) the participant's needs are not beyond the scope of services available through Texas Medicaid home health skilled nursing [~~Title XIX Home Health Skilled Nursing~~] or home health aide services [~~Home Health Aide Services~~], because the needs can be met on a part-time or intermittent basis through a visiting nurse as described by Chapter 354, Subchapter A, Division 3 of this title (relating to Medicaid Home Health Services);

(6) there is a duplication of services;

(7) the services are intended to provide [~~primarily~~] respite care or child care;

(8) the services are provided for the sole purpose of training the participant's responsible adult [~~training~~];

- (9) the prior authorization request is incomplete;
- (10) the information in the prior authorization request is inconsistent; or
- (11) the requested services are not nursing services as defined by the Texas Occupations Code Chapter 301 and its implementing regulations.

(f) All authorization requests, including initial authorization and authorization of extensions or revisions to an existing authorization, must be submitted in writing.

(g) Initial authorization requests for PPECC services must include the following documentation, which adheres to requirements in the Texas Medicaid Provider Procedures Manual:

(1) physician order for services (a physician signature on the PPECC plan of care serves as a physician order for authorization purposes);

(2) a plan of care developed by the PPECC in compliance with §363.209(a)(1) of this subchapter (relating to Benefits and Limitations);

(3) all required prior authorization forms listed in the Texas Medicaid Provider Procedures Manual, or Medicaid managed care organization [(MCO)] forms if they contain comparable content; and

(4) signed consent of the participant or participant's responsible adult, that includes:

(A) documentation that the participant or participant's responsible adult chose [documenting the choice of] PPECC services; [The signed consent must include an]

(B) acknowledgement by the participant or the participant's responsible adult that the PPECC informed the participant or participant's responsible adult [he or she has been informed] that other services such as private duty nursing might be reduced as a result of accepting PPECC services; and [Consent]

(C) the participant's or participant's responsible adult's consent for the PPECC to share the participant's personal health information with the participant's other providers, as needed to ensure coordination of care; [must also be obtained].

(h) Required documentation for recertification of PPECC service authorization after the initial authorization or after an authorization period ends includes the same documents required for an initial authorization, as set forth in subsection (g) of this section.

(i) Revisions during an existing authorization period may be requested at any time, if medically necessary. Revision requests must include the same documentation required for an initial request, as set forth in subsection (g) of this section.

(j) If inadequate or incomplete information is provided, HHSC requests additional documentation from the PPECC [~~provider~~] to enable HHSC to make a decision on the request.

(k) During the authorization process, PPECCs [~~providers~~] are required to deliver the requested services from the start of care date.

(l) PPECCs [Providers] are responsible for a safe transition of services when the authorization decision is a termination, denial, or reduction in the PPECC services being delivered.

(m) A comprehensive nursing assessment must be completed, signed and dated by a PPECC registered nurse [RN] no earlier than three business days before the initial start of care and no later than the day the participant is admitted to the center. A nursing assessment is also required for a revision when there are changes in the participant's

medical condition that impact the amount or duration of services during an existing authorization period, and for recertification of PPECC service authorization. The nursing assessment is used to establish the participant's plan of care, and must contain the elements identified in the Texas Medicaid Provider Procedures Manual.

§363.212. Documentation Requirements for Services Other Than Transportation Services.

(a) A PPECC must obtain and maintain the following documentation in a participant's medical record to be eligible for reimbursement for non-transportation PPECC services provided to the participant:

(1) a physician's specific, written, signed, and dated orders prescribing PPECC services;

(2) an approved prior authorization from HHSC that includes:

(A) a Comprehensive Care Program (CCP) Prior Authorization Request Form;

(B) a PPECC Plan of Care (POC);

(C) a PPECC nursing assessment;

(D) a Nursing Addendum to POC for Private Duty Nursing (PDN) and/or PPECC;

(E) consent for PPECC services as described in the Texas Medicaid Provider Procedures Manual; and

(F) documentation of medical necessity;

(3) the daily attendance log required by subsection (b) of this section; and

(4) the documentation required by subsection (c) of this section.

(b) A PPECC must maintain a daily attendance log that includes:

(1) the date of attendance;

(2) the name of the participant;

(3) the signature of the responsible adult and the time when the PPECC assumes responsibility for the care of the participant which is:

(A) the time the participant boards the PPECC transport vehicle; or

(B) the time the participant is brought to the PPECC by a responsible adult;

(4) the signature of the responsible adult and time when the responsible adult assumes responsibility for the care of the participant which is:

(A) the time the participant is taken off the transport vehicle at the participant's return destination; or

(B) the time the participant is picked up from the PPECC by a responsible adult; and

(5) the name of the PPECC staff member riding in the transport vehicle when PPECC transportation services are utilized and whether the staff member is a registered nurse, licensed vocational nurse, or direct care staff.

(c) A PPECC must maintain the following documentation:

(1) notes from interdisciplinary team meetings;

(2) discrepancies between the weekly service hours scheduled and the service hours provided;

(3) the names of the staff member providing services;

(4) the date of service;

(5) the type of service performed; and

(6) the start and end times of the service performed.

(d) HHSC may request that a PPECC provide documentation to substantiate the provision of services in addition to that required by subsections (a) - (c) of this section.

(e) HHSC may recoup payment for services not substantiated by the documentation required in this section.

*§363.213. Ordering Physician Responsibilities.*

(a) An ordering physician in an employment or contractual relationship with a PPECC cannot provide the required physician's order unless the physician has a therapeutic relationship with and ongoing clinical knowledge of the participant.

(b) The ordering physician's responsibilities include:

(1) providing an in person examination or treatment to the participant within 30 calendar days before the start of PPECC services unless the physician waives this examination because:[:]

(A) a diagnosis has already been established by the physician;

(B) the participant is under the continuing care and medical supervision of the physician; and

(C) the physician has stated in writing that an examination of the participant 30 calendar days prior to admission is not medically necessary;

(2) if a physician waives an examination in accordance with subsection (b)(1) of this section:

(A) the physician must examine the participant in person within 365 calendar days after the date of the participant's last examination; and

(B) the physician and PPECC must maintain documentation of the waived examination and the information described in subsection (b)(1) of this section in the participant's medical record;

(3) [(2)] providing a written, signed, and dated order prescribing [prescription or written, dated physician's order for] PPECC services within 30 calendar days before the participant's start of services[; which is valid through the initial authorization period and complies with requirements contained in the Texas Medicaid Provider Procedures Manual];

(4) providing specific, written, signed, and dated physician orders for PPECC services which is valid through the initial authorization period and complies with requirements contained in the Texas Medicaid Provider Procedures Manual;

(5) [(3)] providing specific, written, signed, and [a signed prescription or written,] dated physician orders [physician's order] for each PPECC authorization period, once the initial [prescription or] order is no longer valid;

(6) [(4)] performing an in person [a face-to-face] evaluation of the participant each year;

(7) [(5)] reviewing, approving, signing, and dating a plan of care (POC), and any other documentation required for service prior authorization, including any updates or changes;

(8) [(6)] affirming in writing that PPECC services are medically necessary for the participant;

(9) [(7)] affirming in writing that the participant's medical condition is sufficiently stable to permit safe delivery of PPECC services as described in the POC [plan of care; and];

(10) affirming in writing that the participant's medical condition is stable and the type of provider, a registered nurse, licensed vocational nurse, or direct care staff, that must be present on the PPECC transportation vehicle as indicated in the POC; and

(11) [(8)] providing continuing care to and medical supervision of the participant.

*§363.215. Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services.*

(a) HHSC terminates authorization for PPECC services when:

(1) the participant is no longer eligible for the Texas Health Steps Comprehensive Care Program [(THSteps-CCP)];

(2) the participant no longer meets the medical necessity criteria for PPECC services;

(3) the PPECC cannot ensure the health and safety of the participant;

(4) the participant or the participant's responsible adult refuses to comply with the plan of care, and compliance is necessary to assure the health and safety of the participant;

(5) the participant changes PPECC providers, and the change of notification is submitted to HHSC in writing with a prior authorization request from the new PPECC provider; or

(6) [after receiving PPECC services,] the participant declines to continue receiving PPECC services and chooses to receive [receives] services at home. [The home health agency or independent provider offering these services must submit and update all required authorization documentation.]

(b) Notice to approve, reduce, [or] deny, or terminate requested PPECC services.

(1) HHSC notifies the participant and the responsible adult in writing of the approval, reduction, [or] denial, or termination of PPECC services.

(2) HHSC notifies the provider in writing of the approval, reduction, [or] denial, or termination of PPECC services.

(3) The effective date of the service reduction or denial is 30 calendar days after the date on the individual's notification letter.

(4) HHSC notifies the individual in writing of the process to appeal the reduction or denial of services.

(c) All participants of Medicaid-funded services have the right to appeal actions or determinations made by HHSC as described in Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules).

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

Filed with the Office of the Secretary of State on October 10, 2024.

TRD-202404822

◆     ◆     ◆

**TITLE 10. COMMUNITY DEVELOPMENT**  
**PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**CHAPTER 7. HOMELESSNESS PROGRAMS**  
**SUBCHAPTER D. ENDING HOMELESSNESS FUND**

**10 TAC §§7.61 - 7.65**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter D, §§7.61 - §7.65, Ending Homelessness Fund. The purpose of the repeal is to eliminate an outdated rule, while adopting a new updated rule under separate action.

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

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

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

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

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

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

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

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

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

8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

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

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2024, to November 29, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HomelessPrograms@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, November 29, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and pursuant to Tex. Transp. Code §512.402(g), which requires the Department to issue rules governing the Ending Homelessness Fund.

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

§7.61. *Purpose and Use of Funds.*

§7.62. *EH Fund Subrecipient Application and Selection.*

§7.63. *Availability of Funds.*

§7.64. *Application Review Process.*

§7.65. *Contract Term and Limitations.*

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 October 11, 2024.



## 10 TAC §§7.61 - 7.64

The Texas Department of Housing and Community Affairs (the Department) proposes new Chapter 7, Subchapter D, §§7.61 - 7.64, Ending Homelessness Fund. The purpose of the proposed new sections is to comply with the requirements of Tex. Transp. Code §502.415 while increasing flexibility for the use of the Ending Homelessness Fund.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family Programs.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new rule does not require additional future legislative appropriations.
4. The proposed new rule will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed new rule will not expand or repeal an existing regulation.
7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new rule will not negatively or positively affect the state's economy.

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

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

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

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

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

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

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Department's Single Family Programs is at the discretion of the local government or other eligible sub-recipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2024, to November 29, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, or email to [HomelessPrograms@tdhca.texas.gov](mailto:HomelessPrograms@tdhca.texas.gov). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, November 29, 2024.

STATUTORY AUTHORITY. The new chapter is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and pursuant to Tex. Transp. Code §512.402(g), which requires the Department to issue rules governing the Ending Homelessness Fund.

Except as described herein the proposed new rule affects no other code, article, or statute.

§7.61. Purpose and Use of Funds.

(a) As authorized by Tex. Transp. Code §502.415, the Ending Homelessness Fund (EH Fund) provides grant funding only to counties and municipalities for the purpose of combating homelessness.

(b) The Department shall publish an EH Fund Plan each biennium, as approved by the Department's Board. The EH Fund Plan shall include a description of EH Fund eligible activities, and an outline of activities and Subrecipients that will be given funding priority.

(c) Permitted EH Fund eligible activities include any activity determined to provide local programs to prevent and eliminate homelessness. Such activities may include any activity eligible under Subchapter B of this Chapter, Homeless Housing and Services Program (HHSP). The EH Fund Plan may further limit eligible activities.

(d) Capitalized terms used in this subchapter shall follow the meanings defined in Subchapter A of this chapter, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in 24 CFR Part 576, or used in that Part and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(e) Funds awarded under the EH Fund are not subject to any Match requirements, but may be used as Match for other programs that do require Match.

§7.62. EH Fund Subrecipient Application and Selection.

(a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department's requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract or who have been awarded ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.

(b) Funds will be available to Applicants as further described in the EH Fund Plan.

(c) Application for funds. Applicants for an award from the EH Fund must submit the following items:

(1) A complete Application including an Applicant certification of compliance with state rules, federal laws, rules, and guidance governing the EH Fund as provided in the Application;

(2) All information required under Subchapter B of this chapter (related to Homeless Housing and Services Program) to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

(3) A proposed budget in the format required by the Department;

(4) Proposed performance targets in the format required by the Department; and

(5) Activity descriptions, as further described in the EH Fund Plan.

(d) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this subchapter (relating to Application Review Process), or as specified in the EH Plan, as applicable.

§7.63. Application Review Process.

(a) Review of Applications. When an Application is received in response to solicitation by the Department, it will be assigned a "Re-

ceived Date" and processed as noted below. An Application will be prioritized for review based on its "Received Date." All Applications received by the deadline described in §7.62(e) of this subchapter (relating to EH Fund Subrecipient Application and Selection) will be reviewed by the Department for completeness and administrative deficiencies to prepare for Board action and potential funding.

(b) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email. Responses to the Department's deficiency notice must be submitted electronically to the Department. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are, in fact, matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant with confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements.

(1) An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.

(2) Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date."

(3) If all funds available under a solicitation from the Department are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(c) Responses to administrative deficiencies. The time period for responding to a deficiency notice commences on the first calendar day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., Austin local time, on the seventh calendar day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply unless the Application period has closed.

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

§7.64. Contract Term and Limitations.

(a) The Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department prior to Contract execution, and must include:

- (1) Authorization to enter into a Contract for EH Funds;
- (2) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and
- (3) Date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) EH Fund Contracts will generally have an initial period of 12 months for fund Expenditure. A request to extend the Contract Term must evidence that the extension is necessary to provide activities required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of a Contract Term are considered on a case-by-case basis and are subject to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the Contract Term that for up to six months from the original Contract Term.

(2) Board approval is required if the Subrecipient requests to extend the Contract Term for more than six months from the original Contract Term. Extensions for greater than 12 months may not be granted.

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 October 11, 2024.

TRD-202404836  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: November 24, 2024  
For further information, please call: (512) 475-3959



**TITLE 25. HEALTH SERVICES**  
**PART 1. DEPARTMENT OF STATE**  
**HEALTH SERVICES**

**CHAPTER 33. EARLY AND PERIODIC**  
**SCREENING, DIAGNOSIS, AND TREATMENT**  
**SUBCHAPTER F. DENTAL SERVICES**

**25 TAC §33.70**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §33.70, concerning Dental Preventive and Treatment Services.

**BACKGROUND AND PURPOSE**

The Texas Health and Human Services Commission (HHSC) proposes to amend §33.70, concerning Dental Preventative and

Treatment Services, to implement House Bill (H.B.) 2056, 87th Legislature, Regular Session, 2021.

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

Before proposing the amendment HHSC waited until after the Texas State Board of Dental Examiners adopted rules in 2022 to regulate the practice of teledentistry. HHSC also needed time to decide which dental services and treatments available through the Texas Health Steps Program could safely and effectively be provided as a teledentistry dental service to clients enrolled in the program.

The proposed amendment to §33.70 adds a new subsection (c) to require dental providers to perform dental services as described in the Texas Medicaid Provider Procedures Manual. The proposed amendment adds new subsection (d) to allow dental providers to conduct an oral evaluation as a teledentistry dental service, as defined in Texas Occupations Code §111.001, for established clients, using synchronous audiovisual technologies.

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

**FISCAL NOTE**

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the proposed 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 new regulations;
- (6) the proposed rule will not expand, limit or repeal existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not impose any additional

costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; 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: (1) increased access to dental care; (2) a rule that complies with state law; and (3) a rule that reflects current business practice.

Trey Wood has also determined that for the first five years the rule is in effect, there are not anticipated economic costs to persons who are required to comply with the proposed rule because participating in teledentistry dental services is optional.

#### 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 [mcsrulpubliccomments@hhs.texas.gov](mailto:mcsrulpubliccomments@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 24R078" 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, Texas Government Code §531.0216, which provides that the Executive Commissioner of HHSC shall adopt rules to develop and implement a system to reimburse providers of services under Medicaid for services performed using teledentistry dental services, Texas Government Code §531.02162, which provides that the Executive Commissioner of HHSC shall by rule establish policies that permit reimbursement under Medicaid for services provided through teledentistry dental services to children with special health care needs, and Texas Government Code §531.02172, which provides HHSC by rule shall require

each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for teledentistry dental services provided by a dentist licensed to practice dentistry in this state.

The amendment affects Texas Government Code §§531.0055, 531.0216, 531.02162, and 531.02172.

#### §33.70. Dental Preventive and Treatment Services.

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

- (1) diagnostic;
- (2) preventive;
- (3) therapeutic (including orthodontic)
- (4) emergency; and
- (5) medically necessary treatment.

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

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

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

The agency certifies that legal counsel has reviewed the 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 October 10, 2024.

TRD-202404817

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: November 24, 2024

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



## CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

### SUBCHAPTER R. ADVISORY COMMITTEES

#### 25 TAC §37.401

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 §37.401, concerning Maternal Mortality and Morbidity Task Force.

#### BACKGROUND AND PURPOSE

The Texas Maternal Mortality and Morbidity Review Committee (MMMRC) studies and reviews cases of pregnancy-related deaths and severe maternal morbidity to identify trends, rates, and disparities.



The purpose of the proposal is to implement House Bill (H.B.) 852, 88th Legislature, Regular Session, 2023, which amended Texas Health and Safety Code, Chapter 34. H.B. 852 added six new MMMRC members and amended the current community advocate MMMRC member position. New positions include physicians specializing in emergency care, cardiology, anesthesiology, oncology, and a representative of a managed care organization. Additionally, the former community advocate position was changed to two community members with experience in a relevant health care field involving the analysis of health care data. One of the community members must represent an urban area of this state, and another must represent a rural area.

H.B. 852 also staggered MMMRC membership terms, making one-third of the terms expire on every odd-numbered year.

This amendment will include changing the title of §37.401 from Maternal Mortality and Morbidity Task Force to Maternal Mortality and Morbidity Review Committee.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §37.401 changes the name of the rule from Maternal Mortality and Morbidity Task Force (committee) to Maternal Mortality and Morbidity Review Committee (MMMRC); adds the task of adopting bylaws to guide MMMRC operations; increases the number of voting members appointed by the DSHS Commissioner from 15 to 21; changes the number of members staggered for six-year terms from four or five members to one-third, or as near as possible to one-third, of the members' terms expiring February 1 of each odd-numbered year; adds training requirements for MMMRC members; adds reference to the current General Appropriations Act for MMMRC participation payment and travel reimbursement; and changes the abolishment and expiration date of the MMMRC from September 1, 2023, to September 1, 2027, to align with Texas Government Code Chapter 325 (Texas Sunset Act).

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Christy Havel Burton has determined that there is no adverse economic impact on small businesses, micro-businesses or rural communities related to the rule, as there is no requirement to alter current business practices. In addition, no rural communities' contract with HHSC and DSHS in any program or service is affected by the proposed rule.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect the local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, Community Health Improvement Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be reduced incidence of pregnancy-related deaths and severe maternal morbidity in this state.

Christy Havel Burton, Chief Financial Officer, 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 enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to DSHS, Maternal and Child Health Unit, P.O. Box 149347, Mail Code 1922, Austin, Texas 78714-9347 or street address 1100 West 49th Street, Austin, Texas 78756; or by email to [maternal-health@dshs.texas.gov](mailto:maternal-health@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 faxing or emailing comments, please indicate "Comments on Proposed Rule 24R040" in the subject line.

#### 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 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 also

required to comply with Texas Health and Safety Code Chapter 34.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 34 and 1001.

§37.401. *Maternal Mortality and Morbidity Review Committee* [Task Force].

(a) The committee. The Maternal Mortality and Morbidity Review Committee (MMMRC) [Task Force (committee)] is appointed under and governed by this subchapter [section]. The MMMRC [committee] is established under Texas Health and Safety Code (THSC)[,] §§34.001 - 34.018.

(b) Purpose. The MMMRC studies [purpose of the committee is to study] cases of pregnancy-related deaths and trends in severe maternal morbidity and makes [to make] recommendations to reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas.

(c) Tasks. The MMMRC [committee]:

(1) studies and reviews:

(A) cases of pregnancy-related deaths;

(B) trends, rates, or disparities in pregnancy-related deaths and severe maternal morbidity;

(C) health conditions and factors that disproportionately affect the most at-risk populations as determined in the joint biennial report required under THSC [Texas Health and Safety Code,] §34.015; and

(D) best practices and programs operating in [other] states with [that have] reduced rates of pregnancy-related deaths;

(2) compares rates of pregnancy-related deaths based on the socioeconomic status of the mother;

(3) determines the feasibility of the MMMRC [committee] studying [eases of] severe maternal morbidity cases; [and]

(4) in consultation with the Perinatal Advisory Council, makes recommendations reducing [to help reduce] the incidence of pregnancy-related deaths and severe maternal morbidity in this state; and[.]

(5) adopts bylaws guiding MMMRC operations.

(d) Reporting requirements [Reports]. No later than September 1 of each even-numbered year, the MMMRC and the Texas Department of State Health Services (DSHS) [committee] must submit a joint biennial written report to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and appropriate committees of the Texas Legislature.

(1) The report must include:

(A) MMMRC [the] findings [of the committee] related to the [their] study and review of cases and trends in pregnancy-related deaths and severe maternal morbidity in this state; and

(B) [any] policy recommendations made to the Texas Health and Human Services Commission (HHSC) [HHSC] Executive Commissioner reducing [to help reduce] the incidence of pregnancy-related deaths and severe maternal morbidity.

(2) DSHS must send [disseminate] the report to [the] state professional associations and organizations listed in THSC [Texas Health and Safety Code,] §34.006(b).

{(e) Sunset Provision. The committee is subject to Texas Government Code, Chapter 325, (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this section expires September 1, 2023.}

(e) [(f)] Composition.

(1) The MMMRC [committee] is composed of 23 [47] members.[,]

(2) [(1)] Twenty-one voting [fifteen] members appointed by the DSHS Commissioner include:

(A) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;

(B) one certified nurse-midwife;

(C) one registered nurse;

(D) one nurse specializing in labor and delivery;

(E) one physician specializing in family practice;

(F) one physician specializing in psychiatry;

(G) one physician specializing in pathology;

(H) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;

(I) one social worker or social service provider;

(J) two [one] community members with experience in a relevant health care field, including a field involving the analysis of health care data, one of whom must represent an urban area of this state and one of whom must represent a rural area of this state [advocate in a relevant field];

(K) one medical examiner or coroner responsible for recording deaths; [and]

(L) one physician specializing in critical care;

(M) one physician specializing in emergency care;

(N) one physician specializing in cardiology;

(O) one physician specializing in anesthesiology;

(P) one physician specializing in oncology; and

(Q) one representative of a managed care organization.

(3) [(2)] Two voting ex-officio members include:

(A) a DSHS representative from the Community Health Improvement Division [of DSHS's family and community health programs;] and

(B) [(3)] the state epidemiologist for DSHS or the epidemiologist's designee.

(4) In appointing members to the MMMRC [committee], the DSHS Commissioner:

(A) includes members working in and representing diverse communities [that are diverse] with regard to race, ethnicity, immigration status, and English proficiency;

(B) includes members from differing geographic regions in the state, including both rural and urban areas;

(C) endeavors to include members [who are] working in and representing communities [that are] affected by pregnancy-related deaths and severe maternal morbidity and [by] a lack of access to relevant perinatal and intrapartum care services; and

(D) ensures [that] the composition of the MMMRC [eommittee] reflects the racial, ethnic, and linguistic diversity of Texas.

(5) [(g)] Terms of office.

(A) [(4)] MMMRC members [Members] are appointed for staggered six-year terms, with one-third or as near as possible to one-third of the MMMRC members' terms [with the terms of four or five members, as appropriate,] expiring February 1st of each odd-numbered year. Regardless of the term limit, an MMMRC member serves until a replacement has been appointed. This guarantees sufficient and appropriate MMMRC member representation.

(B) [(2)] Exceptions may be necessary to stagger terms so the term of each member is six years. An MMMRC [A eommittee] member may apply to serve more than one term.

(C) [(3)] If a vacancy occurs, the DSHS Commissioner will appoint a person [is appointed] to serve the unexpired portion of a [that] term.

(f) [(h)] Officers. The DSHS Commissioner appoints from among the MMMRC [eommittee] members a presiding officer.

(1) The presiding officer presides at all MMMRC [eommittee] meetings at which he or she is in attendance, calls meetings in accordance with this section, appoints subcommittees of the MMMRC [eommittee] as necessary, and ensures [eases] proper reports [to be made] to the HHSC Executive Commissioner. The presiding officer may serve as an ex officio member of any MMMRC subcommittee [of the eommittee].

(2) The MMMRC [eommittee] may reference the [its] presiding officer by another term, such as chairperson.

(g) [(i)] Meetings. The MMMRC [eommittee] meets at least quarterly to conduct business, or at the call of the DSHS Commissioner.

[(1) The eommittee meets at the call of the presiding officer.]

(1) [(2)] Meeting arrangements are made by DSHS staff.

(2) [(3)] The MMMRC [eommittee] is subject to the Open Meetings Act, Texas Government Code Chapter 551, except when the MMMRC [eommittee] conducts a closed meeting to review cases under THSC [Texas Health and Safety Code,] §34.007. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(3) [(4)] A simple majority of the appointed MMMRC [eommittee] members, identified in subsection (e)(2) and (3) of this section, constitutes a quorum for the purpose of transacting official business.

(4) [(5)] The MMMRC [eommittee] is authorized to conduct [transact official] business only when in a legally constituted meeting with a quorum present.

(5) [(6)] The agenda for each MMMRC [eommittee] meeting must include an opportunity for new business or for any member to address the MMMRC [eommittee] on matters relating to MMMRC [eommittee] business.

(6) [(7)] The MMMRC must [eommittee shall] allow for public comment during at least one public meeting each year.

(7) [(8)] The MMMRC must [eommittee shall] present in open session recommendations made under THSC [Texas Health and Safety Code,] §34.005, reducing [to help reduce] the incidence of pregnancy-related deaths and severe maternal morbidity in this state.

(8) [(9)] The MMMRC must [eommittee shall] post public notice for meetings conducted for the sole purpose of reviewing cases for selection under THSC [Texas Health and Safety Code,] §34.007.

(h) [(j)] Attendance. Members must attend MMMRC [eommittee] meetings as scheduled.

(1) An MMMRC [A] member must notify the presiding officer or appropriate DSHS staff if [he or she is] unable to attend a scheduled meeting.

(2) It is grounds for removal from the MMMRC [eommittee] if an MMMRC [a] member cannot conduct MMMRC member [discharge the member's] duties for a substantial part of the term for which the MMMRC member is appointed because of illness or disability, is absent from more than half of the MMMRC [eommittee] meetings during a calendar year, or is absent from at least three consecutive MMMRC [eommittee] meetings.

(3) The validity of an action of the MMMRC [eommittee] is not affected by the fact that it is taken when grounds for removal of a member exists.

(i) [(k)] Staff. Staff support for the MMMRC [eommittee] is provided by DSHS staff.

(j) [(4)] Confidentiality.

(1) Any information pertaining to a pregnancy-related death or severe maternal morbidity is confidential.

(2) Confidential information [that is] acquired by DSHS, including [and that includes] identifying information of an individual or health care provider, is confidential and may not be disclosed to any person.

(3) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider.

(4) The MMMRC [eommittee] may publish statistical studies and research reports based on confidential information [that is eonfidential] under this section, provided [that] the information:

(A) is published in the aggregate;

(B) does not identify a patient or the patient's family;

(C) does not include any information that could be used to identify a patient or the patient's family; and

(D) does not identify a health care provider.

(5) DSHS [The department] will adopt and implement practices and procedures confirming confidential [to ensure that] information [that is eonfidential under this section] is not disclosed in violation of state and federal confidentiality laws [this section].

(6) As required by THSC [In accordance with Texas Health and Safety Code,] §34.009, information held by DSHS or [in] the MMMRC pertaining to pregnancy-related death or severe maternal morbidity [eommittee's possession] is confidential and not subject to [excepted from] disclosure under the Public Information Act, Texas Government Code[;] Chapter 552.

(7) The MMMRC [eommittee] and DSHS must comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(k) [(m)] Statements by members.

(1) HHSC, DSHS, and the MMMRC [committee] are not bound in any way by any statement, recommendation, or action on the part of any MMMRC [committee] member, except when a statement or action is in pursuit of specific instructions from HHSC, DSHS, or the MMMRC [committee].

(2) The MMMRC [The committee] and MMMRC [its] members may not participate in legislative activity in the name of HHSC, DSHS, or the MMMRC [committee] except with approval through the DSHS [HHSC's] legislative process. MMMRC [Committee] members are not prohibited from representing themselves or other entities in the legislative process.

(3) An MMMRC [A committee] member must not accept or solicit any benefit that might reasonably [tend to] influence the member in the conduct [discharge] of the member's official duties.

(4) An MMMRC [A committee] member must not disclose confidential information acquired through MMMRC [his or her committee] membership.

(5) An MMMRC [A committee] member must not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) An MMMRC [A committee] member with [who has] a personal or private interest in a matter pending before the MMMRC [committee] must publicly disclose the fact in an MMMRC [a committee] meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the MMMRC [committee] member has a direct monetary [pecuniary] interest in the matter but does not include the MMMRC [committee] member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(l) Required Training. Each MMMRC member must complete training on relevant statutes and rules; Texas Government Code Chapters 551, 552, and 2110; the Health and Human Services (HHS) Ethics Policy; the Advisory Committee Member Code of Conduct; and other relevant HHS policies. DSHS will provide the training.

(m) [~~n~~] Travel Reimbursement [Reimbursement for expenses].

(1) Unless permitted by the current General Appropriations Act, MMMRC members are not paid to participate in the MMMRC nor reimbursed for travel to and from meetings [Members appointed to the committee are not entitled to compensation for service on the committee or reimbursement for travel or other expenses incurred by the member while conducting the business of the committee].

(2) In carrying out [its] duties, the MMMRC [committee] may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

(n) Sunset Provision. The MMMRC is subject to Texas Government Code Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the MMMRC is abolished and this subchapter expires September 1, 2027.

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 October 9, 2024.  
TRD-202404788

Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: November 24, 2024  
For further information, please call: (512) 776-7373

◆ ◆ ◆

## CHAPTER 157. EMERGENCY MEDICAL CARE

### SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

#### 25 TAC §157.11

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendment to §157.11, concerning Requirements for an EMS Provider License.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Senate Bill (S.B.) 2133, 88th Legislature, Regular Session, 2023, that amended Texas Health and Safety Code (HSC) §773.050 by adding subsection (j). The new subsection requires emergency medical services (EMS) providers to have a plan for transporting dialysis patients directly to and from an outpatient end stage renal disease facility during a declared disaster, if the patient's normal and alternative modes of transportation cannot be used. Texas HSC §773.050(j) permits the EMS provider's plan to prioritize transporting a patient suffering from an acute emergency condition over transporting a dialysis patient. The proposed amendment to 25 TAC §157.11 aligns with the changes in Texas HSC §773.050.

Additionally, House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code that becomes effective on April 1, 2025.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §157.11 revises language for clarity, consistency, plain language, and style throughout the rule; updates reference to current laws; and clarifies participation in the Regional Advisory Council triage plan to align with current practice throughout Texas and the nation. The proposed amendment adds language that an EMS provider must have a plan for providing transport for a dialysis patient who places an emergency 9-1-1 telephone call during a declared disaster and adds language that permits the EMS provider's plan to prioritize transporting a patient suffering from an acute emergency condition over transporting a dialysis patient. The proposed amendment also adds language that the liability of a unit of local government under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property, as described in Texas Civil Practice and Remedies Code Section 101.023(d).

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, is adopted in response to a natural disaster, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DVM, Ph.D., Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be the safe operation of the Texas Emergency Medical Services concerning the transport of dialysis patients in a declared disaster.

Christy Havel Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment will not have an economic impact on an EMS provider operation.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Texas State EMS Director, DSHS, Attn: Proposed Emergency Medical Services Rules, P.O. Box 149347, Mail Code 1876, Austin, Texas 78714-3247; or 1100 West 49th Street, Austin, Texas 78756; or emailed to EMSInfo@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 Rule 24R023" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 773, which allows DSHS to promulgate rules for the transfer of dialysis patients during a declared disaster; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHS 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 implements Texas Government Code §531.0055 and Chapter 540 and Texas Health and Safety Code Chapters 773 and 1001.

*§157.11. Requirements for an Emergency Medical Services (EMS) [EMS] Provider License.*

(a) Purpose: Acquiring, issuing, and maintaining an EMS provider license [Providers License].

(b) EMS in Texas is a delegated practice, as written in Texas Occupations Code[§] §157.003.

(c) Application requirements for an EMS provider license [Emergency Medical Services (EMS) Provider License].

(1) An applicant for an initial EMS provider license must [shall] submit a completed application to the department on the required official forms, following the department's written process.

(2) The nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle to be operated under the license must [shall] accompany the application.

(3) The department will process the EMS provider license application as per §157.3 of this chapter [title] (relating to Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensure).

(4) An EMS provider holding a valid license or authorization from another state is exempt from holding a Texas EMS provider license if the provider:[§]

(A) serves an [whose service] area that adjoins the State of Texas;

(B) has [who has in place] a written mutual aid agreement[§] with a licensed Texas EMS provider;[§]

(C) is [and who when] requested to do so by a licensed Texas EMS provider;[§]

(D) responds into Texas for emergency mutual aid assistance; and<sup>[;]</sup>

(E) is ~~[may be exempt from holding a Texas EMS provider license, but will be]~~ obligated to perform to the same medical standards of care required by ~~the [of EMS providers licensed by their]~~ home state.

(5) A fixed-wing or rotor-wing air ambulance provider, appropriately licensed by the state governments of New Mexico, Oklahoma, Arkansas, Kansas, Colorado, or Louisiana, may apply for a reciprocal ~~[issuance of a]~~ provider license. ~~The [; and the]~~ application ~~does [would]~~ not require staffing by Texas EMS certified or licensed personnel. A nonrefundable administrative fee of \$500 per provider in addition to a nonrefundable fee of \$180 for each EMS aircraft to be operated in Texas under the reciprocal license ~~must [shall]~~ accompany the application.

(6) An applicant for an EMS provider license that provides emergency prehospital care is exempt from ~~paying [payment of]~~ department licensing and authorization fees if the ~~provider [firm]~~ is staffed with at least 75 percent ~~[75%]~~ volunteer personnel, has no more than five full-time staff or equivalent, and ~~[the firm]~~ is recognized as a §501(c)(3) nonprofit corporation by the Internal Revenue Service. An EMS provider who compensates a physician to provide medical supervision ~~will [may]~~ be exempt from ~~paying [the payment of]~~ department licensing and authorization fees if all other requirements for fee exemption are met.

(7) Required documents that ~~must [shall]~~ accompany a license application.

(A) Document verifying volunteer status, if applicable.

(B) Map and description of service area, a list of counties and cities in which applicant proposes to provide primary emergency service, and a list of all station locations with address and telephone and facsimile transmission numbers for each station.

(C) Declaration of organization type and profit status.

(D) Declaration of ~~provider name [Provider Name]~~.

(i) The legal name of the EMS provider cannot include the name of the city, county, or regional advisory council (RAC) within or in part, unless written approval is given by the individual city, county, or RAC ~~[regional advisory council]~~ respectively.

(ii) ~~[The EMS provider operational name cannot include the name of the city, county or regional advisory council within or in part, unless written approval is given by the individual city, county or regional advisory council respectively.]~~ A proposed provider name is deemed to be the same name as ~~[deceptively similar to]~~ an established licensed EMS provider if it meets the conditions listed in ~~[the Office of the Secretary of State rule,] 1 Texas Administrative Code (TAC)<sup>[;]</sup> §79.39 (relating to Same Defined) and therefore is not available if a comparison of the names reveals no differences ~~[Deceptively Similar Name)]~~.~~

(E) Declaration of ~~ownership [Ownership]~~.

(F) Declaration of the address for the main location of the business, normal business hours, and ~~[provide]~~ proof of ownership or lease of ~~the [such]~~ location.

(i) The normal business hours must be posted for public viewing.

(ii) A service area map must be provided.

(iii) Only one EMS provider license will be issued to each fixed address.

(iv) The applicant ~~must [shall]~~ attest ~~[that]~~ no other licensed ~~[license]~~ EMS provider is at the ~~[provided]~~ business location or address ~~provided~~.

(v) The EMS ~~[emergency medical services]~~ provider must remain in the same physical location for the period of licensure, unless the department approves a change in location.

(G) A statement of ~~[Declaration of the administrator of record and any subsequently filed declaration of a new administrator shall declare the following, if the EMS provider is required to have]~~ an administrator of record under Texas ~~[as per]~~ Health and Safety Code<sup>[;]</sup> §773.0571 or §773.05712.

(H) The administrator of record statement must declare ~~they:~~

(i) ~~are [The administrator of record is]~~ not employed or otherwise compensated by another private for-profit EMS provider;<sup>[;]</sup>

(ii) ~~meet [The administrator of record meets]~~ the qualifications required for an emergency medical technician certification or other health care professional license with a direct relationship to EMS and currently hold ~~[holds]~~ such certification or license issued by the State of Texas;<sup>[;]</sup>

(iii) ~~have [The administrator of record has]~~ submitted to a criminal history record check at the applicant's expense as directed in §157.37 of this ~~chapter [title]~~ (relating to Certification or Licensure of Persons With Criminal Backgrounds);<sup>[;]</sup>

(iv) ~~have [The administrator of record has]~~ completed an initial education course approved by the department regarding state and federal laws and rules ~~affecting [that affect]~~ EMS in the following areas:

(I) ~~Texas~~ Health and Safety Code<sup>[;]</sup> Chapter 773 and 25 ~~TAC [Texas Administrative Code,]~~ Chapter 157;

(II) EMS dispatch processes;

(III) EMS billing processes;

(IV) Medical control accountability; ~~[and]~~

(V) Quality improvement processes for EMS operations; ~~and<sup>[;]</sup>~~

(v) ~~have completed [The applicant will assure that its administrator of record annually complete]~~ eight hours of continuing education related to the Texas and federal laws and rules related to EMS.

~~[(vi) An EMS provider that is directly operated by a governmental entity, is exempt from this subparagraph, except for declaration of administrator of record.]~~

(I) ~~[(vii) If the [An] EMS provider [that] held a license on September 1, 2013, and has an administrator of record with [who has] at least eight years of experience providing EMS, then the administrator of record statement is exempt from subparagraph (H)(ii) and (iii) of this paragraph [elapses (ii) and (iv) of this subparagraph].~~

(J) EMS providers operated by a governmental entity are exempt from subparagraph (H) of this paragraph except for ~~declaration of administrator of record~~.

(K) ~~[(H)]~~ Copies of Doing Business Under Assumed Name Certificates (DBA).

(L) ~~[(H)]~~ Completed EMS ~~personnel form [Personnel Form]~~.

(M) ~~[(d)]~~ Staffing Plan describing ~~[that describes]~~ how the EMS provider provides continuous coverage for the service area defined in documents submitted with the EMS provider application. The EMS provider must ~~[shall]~~ have a staffing plan that addresses coverage of the service area or must ~~[shall]~~ have a formal system to manage communication when not providing services after normal business hours.

(N) ~~[(K)]~~ Completed EMS vehicle form ~~[Vehicle Form]~~.

(O) ~~[(L)]~~ Declaration of an employed medical director and a copy of the signed contract or agreement with a physician ~~[who is]~~ currently licensed in the State of Texas, in good standing with the Texas Medical Board and~~;~~ in compliance with Texas Medical Board rules, 22 TAC ~~[Texas Administrative Code,]~~ Chapter 197, and ~~[in compliance with Title 3 of the]~~ Texas Occupations Code Title 3.

(P) ~~[(M)]~~ Completed medical director information form ~~[Medical Director Information Form]~~.

(Q) ~~[(N)]~~ Treatment and transport protocols ~~[Transport Protocols]~~ and policies addressing the care to be provided to adult, pediatric, and neonatal patients, and as stated in Texas Health and Safety Code §773.112 ~~[§773.112(d)]~~, must be approved and signed by the medical director.

(R) ~~[(O)]~~ A list of equipment as required on the EMS provider ~~[Provider]~~ initial and renewal application, with identifiable or legible serial numbers, supplies, and medications~~;~~ approved and signed by the medical director.

(S) ~~[(P)]~~ Documentation ~~[The applicant shall attest]~~ that all required equipment is permitted to be used by the EMS provider and ~~[provide]~~ proof of ownership or ~~[hold a]~~ long-term lease for all equipment necessary for the safe operation.

(T) ~~[(Q)]~~ Documentation ~~[The applicant shall attest]~~ that each authorized vehicle will have its own set of equipment required for such vehicles ~~[each authorized vehicle]~~ to operate at the level of the service for which the provider is authorized.

(U) ~~[(R)]~~ Description of how the EMS provider will conduct quality assurance in coordination with the EMS provider medical director.

(V) ~~[(S)]~~ Documentation ~~[The applicant shall provide an attestation or provide documentation]~~ that the applicant or the ~~[it and/or its]~~ management staff will begin or continue ~~[or continues]~~ to participate in the local RAC ~~[regional advisory council]~~.

(W) ~~[(T)]~~ Plan for how the provider will respond to disaster incidents, including mass casualty situations in coordination with local and regional plans.

(i) An EMS provider must have a plan for providing transport for a dialysis patient who places an emergency 9-1-1 telephone call during a declared disaster. An alternative mode of transport may be used to move the patient directly to and from an outpatient end stage renal disease facility if the patient's normal and alternative modes of transportation cannot be used during the disaster. The plan will include a communication plan with the receiving facility prior to the patient being transported to a receiving facility.

(ii) An EMS provider's plan under this subsection may prioritize providing transportation for a patient suffering from an acute emergency condition over transportation for a dialysis patient.

(I) A "disaster" has the meaning assigned by Texas Government Code §418.004 and §418.014.

(II) "End stage renal disease facility" has the meaning assigned by Texas Health and Safety Code §251.001(7).

(X) ~~[(U)]~~ Copies of written Mutual Aid or ~~[and/or]~~ Inter-local Agreements with EMS providers.

(Y) ~~[(V)]~~ Documentation as required for subscription or membership program, if applicable.

(Z) ~~[(W)]~~ Certificate of Insurance, provided by the insurer, identifying the department as the certificate holder and indicating at least minimum motor vehicle liability coverage for each vehicle to be operated, and professional liability coverage. If applicant is a government subdivision, applicant must submit evidence of financial responsibility by self-insuring to the limit imposed by the tort claims provisions of the Texas Civil Practice and Remedies Code.

(i) The applicant must ~~[shall]~~ maintain motor vehicle liability insurance as required under the Texas Transportation Code.

(ii) The applicant must ~~[shall]~~ maintain professional liability insurance coverage in the minimum amount of \$500,000 for each single ~~[per]~~ occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property, as described in Texas Civil Practice and Remedies Code §101.023(c), or as necessary per state law, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas. Alternatively, the applicant may provide ~~[or]~~ acceptable proof of self-insurance or captive insurance in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient.

(iii) Liability of a unit of local government under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property, as described in Texas Civil Practice and Remedies Code §101.023(d).

(AA) ~~[(X)]~~ Copies ~~[The applicant shall provide copies]~~ of vehicle titles, vehicle lease agreements, ~~[copies of]~~ exempt registrations if applicant is a government subdivision, or an affidavit identifying applicant as the owner, lessee, or authorized operator for each vehicle to be operated under the license.

(BB) ~~[(Y)]~~ Documentation ~~[The applicant shall provide documentation of the following,]~~ showing ~~[that]~~ the applicant and ~~[, including its]~~ management staff possess ~~[possesses]~~ sufficient EMS professional experience and qualifications as follows ~~[related to EMS]~~:

(i) an ~~[an]~~ attestation that ~~[its]~~ management staff have read the Texas Emergency Healthcare Act and the department's EMS rules in this chapter; and

(ii) proof of one year experience or education provided by a nationally recognized organization on:

(I) emergency medical dispatch processes;

(II) ~~[(iii)]~~ [proof of one year experience or education provided by a nationally recognized organization concerning] EMS billing processes;

(III) ~~[(iv)]~~ [proof of one year experience or education provided by a nationally recognized organization on] medical control accountability; and

(IV) ~~[(v)]~~ [proof of one year experience or education provided by a nationally recognized organization on] quality improvement processes for EMS operations.

(CC) [(Z)] A copy of a letter of credit for [the] obtaining or renewing [of] an EMS provider [Providers] license, issued by a federally insured bank or savings institution:

(i) in the amount of:

(I) \$100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(II) [(ii)] [in the amount of] \$75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(III) [(iii)] [in the amount of] \$50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued;

(IV) [(iv)] [in the amount of] \$25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(ii) [(v)] that includes: [shall include]

(I) the names of all [of] the parties involved in the transaction;

(II) [(vi)] [that shall include] the name [names] of the person [persons] or entity[;] who owns the EMS provider operation and to whom the bank is issuing the letter of credit;

(III) [(vii)] [that shall include] the name of the person or entity[;] receiving the letter of credit; and

(IV) [(viii)] an EMS provider [that is] directly operated by a governmental entity is exempt from this subsection.

(DD) [(AA)] A copy of the surety bond in the amount of \$50,000 issued to and provided to the Health and Human Services Commission by the applicant[;] participating in the medical assistance program operated under Texas Human Resources Code[;] Chapter 32, the Medicaid Managed Care Program [managed care program] operated under Texas Government Code[;] Chapter 540 [533], or the child health plan program operated under Texas Health and Safety Code[;] Chapter 62. An EMS provider [that is] directly operated by a governmental entity is exempt from this subparagraph.

(EE) [(BB)] Documentation showing [evidencing] applicant or management team has not been excluded from participation in the state Medicaid program.

(FF) [(CC)] A copy of a governmental entity letter of approval that must [shall]:

(i) be from the governing body of the municipality in which the applicant is located and is applying to provide EMS;

(ii) be from the commissioner's court of the county in which the applicant is located and is applying to provide EMS, if the applicant is not located in a municipality;

(iii) attest [include the attestation that] the addition of another licensed EMS provider will not interfere with or adversely affect the provision of EMS by the licensed EMS providers operating in the municipality or county;

(iv) attest, if applicable, [include the attestation that] the addition of another licensed EMS provider will remedy an existing provider shortage that cannot be resolved using [through the use of] the licensed EMS providers operating in the municipality or county; and

(v) attest [include the attestation that] the addition of another licensed EMS provider will not cause an oversupply of licensed EMS providers in the municipality or county.

(8) Paragraph (7)(FF) [(CC)] of this subsection does not apply to the renewal of an EMS provider license, or to a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(9) An EMS provider is prohibited from expanding operations to or stationing any EMS vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this subsection until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(A) a contract awarded by another municipality or county for the provision of EMS;

(B) an emergency response made in connection with an existing mutual aid agreement; or

(C) an activation of a statewide emergency or disaster response by the department.

(10) Paragraph (9) of this subsection does not apply to the renewal of an EMS provider license or to a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(11) Paragraph (9) of this subsection does not apply to fixed or rotor wing EMS providers.

(d) EMS Provider License Issuance.

(1) License.

(A) Applicants who have submitted all required documents and who have met all the criteria for licensure will be issued a provider license [to be] effective for a period of two years from the date of issuance.

(B) Licenses must [shall] be issued in the name of the applicant.

(C) License expiration dates may be adjusted by the department to create licensing periods less than two years for administrative purposes.

(D) An application for an initial license or for the renewal of a license may be denied to a person or legal entity who owns or [who] has owned any portion of an EMS provider service or who operates or manages [operates/manages] or [who/which] has operated or managed [operated/managed] any portion of an EMS provider service that [which] has been sanctioned by or that [which] has a proposed disciplinary action or sanction [action/sanction] pending against it by the department or any other local, state, or federal agency.

(E) The license will be issued in the form of a certificate that must [which shall] be prominently displayed in a public area of the provider's primary place of business.

(F) An EMS provider license [Provider License] issued by the department is [shall] not [be] transferable to another person or entity.

(2) Vehicle Authorization.

(A) The department issues [will issue] an authorization for each vehicle [to be] operated by the applicant meeting [which meets] all criteria for approval as defined in this subsection [(d) of this section].



(B) A vehicle authorization is is ~~[shall be]~~ issued for the following levels of service. A ~~[, and a]~~ provider may operate at a higher level of service based on appropriate staffing, equipment, and medical direction for that level. A vehicle authorization includes ~~[will include]~~ a level of care designation at one of the following levels:

- (i) Basic Life Support (BLS);
- (ii) BLS with Advanced Life Support (ALS) capability;
- (iii) BLS with Mobile Intensive Care Unit (MICU) capability;
- (iv) ALS; ~~[Advanced Life Support (ALS);]~~
- (v) ALS with MICU capability;
- (vi) MICU; ~~[Mobile Intensive Care Unit (MICU);]~~
- (vii) Air Medical:
  - (I) Rotor-wing ~~[Rotor wing];~~ or
  - (II) Fixed-wing ~~[Fixed wing];~~ and
  - (viii) Specialized.

(C) Change of Vehicle Authorization. To change an authorization to a different level, the provider must ~~[shall]~~ submit a request with appropriate documentation to the department verifying the provider's ability to perform at the requested level. A \$30 fee ~~is~~ ~~[of \$30 shall be]~~ required for each new authorization requested. The provider must not operate a vehicle until authorized by ~~[shall allow sufficient time for]~~ the department ~~[to verify the documentation and conduct necessary inspections before implementing service at the requested authorization level].~~

(D) Vehicle Authorizations are not required to be specific to particular vehicles and may be interchangeably placed in other vehicles as necessary. The original Vehicle Authorization for the appropriate level of service must ~~[shall]~~ be prominently displayed in the patient compartment of each vehicle.~~[:]~~

(E) Vehicle Authorizations are not transferable between providers.

(F) A replacement of a lost or damaged license or authorization may be issued, if requested, with a nonrefundable fee of \$10.

(3) Declaration of Business Operational Name and Administration.

(A) The applicant must ~~[shall]~~ submit a list of all business operational names under which the service is operated. If the applicant intends to operate the service under a name or names different from ~~that on the issued license~~ ~~[name for which the license is issued]~~, the applicant must ~~[shall]~~ submit certified copies of assumed name certificates.

(B) A change in the operational name in which the service is operated requires ~~[will require]~~ a new application and a prorated fee as determined by the department. The department will issue a ~~[A]~~ new provider number ~~[will be issued].~~

(C) Name of Administrator of Record must be declared. The applicant must ~~[shall]~~ submit a notarized document declaring the full name, mailing address, email address, and telephone number of the chief administrator ~~to~~, ~~his/her mailing address and telephone number~~ ~~to~~ whom the department addresses ~~[shall address]~~ all official communications in regard to the license.

(e) Vehicle Requirements ~~[Vehieles].~~

(1) All EMS vehicles must be adequately constructed, equipped, maintained, and operated to safely and efficiently render patient care, comfort, and transportation of adult, pediatric, and neonatal patients ~~[safely and efficiently]~~. A pediatric and neonatal equipment list must ~~[should]~~ be based on endorsed pediatric equipment national standards within the approved equipment list required by the medical director.

(2) EMS vehicles must allow the proper and safe storage and use of ~~[ah]~~ required equipment, supplies, and medications and must allow ~~[ah]~~ required procedures to be carried out in a safe and effective manner.

(3) As approved by the department, EMS vehicles must meet a practical, efficient minimum national ambulance vehicle body type, dimension, and safety criteria standards.

(4) When in service, all ~~[AH]~~ vehicles must ~~[shall]~~ have an environmental system within the patient compartment capable of heating or cooling the patient ~~[patient(s)]~~ and staff, in accordance with the manufacturer specifications~~;~~ ~~within the patient compartment at all times when in service]~~ and that ~~[which]~~ allows for protection of medication, according to manufacturer specifications, from extreme temperatures ~~[if it becomes environmentally necessary].~~

(A) The provider must ~~[shall]~~ provide evidence of an operational policy that lists ~~[which shall list]~~ the parenteral pharmaceuticals authorized by the medical director.

(B) The provider must document and describe the storage of pharmaceuticals authorized by the medical director and stored in accordance with the manufacturer and U.S. Federal Drug Administration (FDA) recommendations ~~[and which shall define the storage and/or FDA recommendations].~~

(C) Compliance with the policy must ~~[shall]~~ be incorporated into the provider's Quality Assurance process and must ~~[shall]~~ be documented on unit readiness reports.

(5) EMS vehicles must ~~[shall]~~ have operational two-way communication capable of contacting appropriate medical resources and as outlined in the current Texas interoperability plan unless the vehicle is designated as being out of service with ~~[using]~~ the form provided by the department.

(6) EMS vehicles must comply ~~[shall be in compliance]~~ with all applicable federal, state, and local requirements unless the vehicle is designated out of service with the form provided by the department.

(7) All EMS vehicles must ~~[shall]~~ have the name of the provider and a current department-issued ~~[department issued]~~ EMS provider license number prominently displayed on both sides of the vehicle in at least 2-inch ~~[2 inch]~~ lettering and in contrasting color. The license number must ~~[shall]~~ have the letters TX prior to the license number. This requirement does not apply to fixed or rotor wing aircraft.

(f) Substitution, Replacement, [replacement] and Additional [additional] EMS Vehicles ~~[vehieles].~~

(1) The EMS provider must ~~[shall]~~ notify the department within five business days if the EMS provider substitutes or replaces a vehicle. No fee is required for a vehicle substitution or replacement.

(2) The EMS provider must ~~[shall]~~ notify the department if the EMS provider adds a vehicle to the provider's operational fleet prior to making the vehicle response ready ~~[response-ready]~~. A vehicle authorization request must ~~[shall]~~ be submitted with a nonrefundable vehicle fee prior to the vehicle being placed into service.

(g) Staffing Plan Required.

(1) The applicant must [shall] submit a completed EMS Personnel Form listing each response person assigned to staff EMS vehicles by name, certification level, and department-issued certification or license [department issued certification/license] identification number.

(2) An EMS provider responsible for an emergency response area [that is] unable to provide continuous coverage within the declared service areas must [shall] publish public notices in local media, to include social media, of its inability to provide continuous response capability and [shall] include the days and hours of its operation. The EMS provider must [shall] notify all public safety answering [the public safety-answering] points and all dispatch centers of the days and hours when unable to provide coverage. The EMS provider must [shall] submit evidence that reasonable attempts to secure coverage from other EMS providers were [have been] made.

(3) The applicant must provide proof at license initiation [initial] and renewal [of license] that all licensed or certified personnel [have] completed a jurisprudence examination approved by the department on state and federal laws and rules affecting [that affect] EMS.

(h) Minimum Staffing Required.

(1) BLS--When response ready [response-ready] or in-service, authorized EMS vehicles operating at the BLS level must [shall] be staffed at a minimum with two emergency care attendants (ECAs) or higher certified or licensed staff.

(2) BLS with ALS capability--When response ready [response-ready] or in-service, authorized EMS vehicles operating below the ALS level must be staffed with two ECAs. Full ALS status becomes active when staffed by [at least] an advanced emergency medical technician (AEMT) [(EMT-Intermediate or AEMT)] and [at least] an emergency medical technician (EMT) or higher certified or licensed staff [EMT].

(3) BLS with MICU capability--When response ready [response-ready] or in-service, authorized EMS vehicles operating below the MICU level must be staffed with two ECAs. Full MICU status becomes active when staffed by [at least] a certified or licensed paramedic and an EMT or higher certified or licensed staff [at least an EMT].

(4) ALS--When response ready [response-ready] or in-service, authorized EMS vehicles operating at the ALS level must [shall] be staffed with one AEMT and one EMT or higher certified or licensed staff [at a minimum with one EMT Basic and one AEMT or EMT-Intermediate].

(5) ALS with MICU capability--When response ready [response-ready] or in-service, authorized EMS vehicles operating below the MICU level must be staffed with [shall require] one [EMT-Intermediate or] AEMT and one EMT. Full MICU status becomes active when staffed by [at least] a certified or licensed paramedic and [at least] an EMT or higher certified or licensed staff.

(6) MICU--When response ready [response-ready] or in-service, authorized EMS vehicles operating at the MICU level must [shall] be staffed at a minimum with [one EMT Basic and] one certified or licensed paramedic and one EMT or higher certified or licensed staff [EMT-Paramedic].

(7) Specialized--When response ready [response-ready] or in-service, EMS vehicles authorized to operate for a specialized purpose must [shall] be staffed with a minimum of two personnel appropriately licensed or [and/or] certified as determined by the type and application of the specialized purpose and as approved by the medical director and the department.

(8) For air ambulance staffing requirements refer to §157.12(f) of this subchapter [title] (relating to Rotor-wing Air Ambulance Operations) or §157.13(g) of this subchapter [title] (relating to Fixed-wing [Fixed-wing] Air Ambulance Operations).

(9) When response ready [response-ready] or in-service, authorized EMS vehicles may operate at a lower level than licensed by the department. When operating at the BLS level with an ALS MICU [ALS/MICU] ambulance, the EMS provider must have an approved security plan for the ALS MICU [ALS/MICU] medication as approved by the EMS provider medical director's protocol and [and/or] policy.

(10) As justified by patient needs, providers may utilize appropriately certified or [and/or] licensed medical personnel in addition to those [which are] required by the [their] designation levels. In addition to the care rendered by the required staff, the provider must [shall] be accountable for care rendered by any additional personnel.

(i) Treatment and Transport Protocols Required. The protocols must include:

(1) [The applicant shall submit] written policies related to patient care and delegated standing orders for patient treatment and transport, [protocols and policies related to patient care which have been] approved and signed by the provider's medical director;[-]

(2) [The protocols shall have] an effective date;[-]

(3) [The protocols shall address] the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff, may provide patient care on behalf of the provider or [and/or] in the provider's EMS vehicles;[-]

(4) [The protocols shall address] the use of all required, additional, or [and/or] specialized medical equipment, supplies, and pharmaceuticals carried on each EMS vehicle in the provider's fleet;[-]

(5) identified [The protocols shall identify] delegated procedures for each EMS certification [Certification] or license level utilized by the provider; and[-]

(6) the EMS medical director's approved protocols to be followed by on-duty EMS [The protocols shall indicate specific applications, including geographical area and duty status of] personnel within the EMS provider's geographical location, unless otherwise specified.

(j) EMS Equipment, Supplies, Medical Devices, Parenteral Solutions, and Pharmaceuticals [supplies, medical devices, parenteral solutions and pharmaceuticals].

(1) The EMS provider must [shall] submit a list, approved and signed by the medical director and fully supportive of and consistent with the treatment and transport protocols, of all medical equipment, supplies, medical devices, parenteral solutions, and pharmaceuticals to be carried. The list must [shall] specify the quantities of each item to be carried and [shall specify] the sizes and types of each item necessary to provide appropriate care for all age ranges appropriate to the needs of [their] patients. The quantities listed must [shall] be appropriate to the provider's call volume, transport times, and restocking capabilities.

(2) All patient care equipment[-] and medical devices must be operational, appropriately secured in the vehicle at the time of providing patient care, and response ready. Supplies must [- and supplies shall] be clean and fully operational. All patient care powered equipment must [shall] have a manual mechanical feature, spare batteries, or an alternative power source[- if applicable].

(3) All solutions and pharmaceuticals must [shall] be up to date and [shall] be stored and maintained in accordance with the

manufacturer's and ~~and/or~~ U.S. FDA [Federal Drug Administration (FDA)] recommendations.

(4) The requirements for air ambulance equipment and supplies are listed in §157.12(h) and ~~[157.12(h) of this title or] §157.13(h) of this subchapter~~ [title].

(k) The following equipment must ~~shall~~ be present on each [EMS] in-service EMS vehicle and on, or immediately available for, each response ready ~~response-ready~~ vehicle as ~~specified in the equipment list as~~ required by the medical director's approved equipment list to include all state-required ~~state required~~ equipment. The equipment list must ~~shall~~ include equipment required for treatment and transport of adult, pediatric, and neonatal patients.

(1) Basic Life Support (BLS):

(A) equipment [Equipment] required to administer the BLS scope of practice and incorporate ~~incorporates~~ the knowledge, competencies, and basic skills of an EMT or ECA [EMT/ECA] and additional skills as authorized by the EMS provider medical director; ~~all[- AH] BLS ambulances must shall~~ be able to transport patients and perform ~~treatment and transport patients receiving~~ the following treatments [skills]:

(i) airway, ventilation, oxygenation ~~[airway/ventilation/oxygenation];~~

(ii) cardiovascular circulation;

(iii) immobilization;

(iv) medication administration - routes; and

(v) single and multi-system trauma patients;[-]

(B) oropharyngeal airways;

(C) portable and vehicle mounted suction;

(D) bag valve mask units, oxygen capable;

(E) portable and vehicle mounted oxygen;

(F) oxygen delivery devices;

(G) dressing and bandaging materials;

(H) commercial tourniquet;

(I) rigid cervical immobilization devices;

(J) spinal immobilization devices;

(K) extremity splints;

(L) equipment to meet special patient needs;

(M) equipment for determining and monitoring patient vital signs, condition or response to treatment;

(N) pharmaceuticals, as required by the medical director ~~director's~~ protocols;

(O) an external cardiac defibrillator appropriate to the staffing level with two sets of adult and two sets of pediatric pads;

(P) a patient-transport device capable of being secured to the vehicle;[- and] the patient must be fully restrained per manufacturer recommendations; and

(Q) an epinephrine auto injector or similar device capable of treating anaphylaxis.

(2) Advanced Life Support (ALS):

(A) equipment required to administer the ALS scope of practice and incorporate ~~incorporates~~ the knowledge, competencies,

and basic and advanced skills of an AEMT and additional skills as authorized by the EMS provider medical director; ~~all[- AH] ALS ambulances must shall~~ be able to transport patients and perform ~~treatment and transport patients receiving~~ the following treatments [skills], including all required BLS equipment to perform treatment and transport patients receiving the following skills]:

(i) airway, ventilation, oxygenation ~~[airway/ventilation/oxygenation];~~

(ii) cardiovascular circulation;

(iii) immobilization;

(iv) medication administration - routes; [and]

(v) intravenous (IV) initiation and maintenance of ~~[initiation/maintenance] fluids; and[-]~~

(vi) single and multi-system trauma patients;

(B) all required BLS equipment; and

(C) advanced airway equipment.[-]

~~[(D) IV equipment and supplies;]~~

~~[(E) pharmaceuticals as required by medical director protocols; and]~~

~~[(F) wave form capnography or state approved carbon dioxide detection equipment must be used after January 1, 2018, when performing or monitoring endotracheal intubation.]~~

(3) Mobile Intensive Care Unit (MICU) [MICU]:

(A) equipment required to administer the knowledge, competencies, and advanced skills of a paramedic, and additional skills as authorized by the EMS provider medical director; ~~all[- AH] MICU ambulances must shall~~ be able to transport patients and perform ~~treatment and transport patients receiving~~ the following treatments [skills]:

(i) airway, ventilation, oxygenation ~~[airway/ventilation/oxygenation];~~

(ii) cardiovascular circulation;

(iii) immobilization;

(iv) medication administration - routes; [and]

(v) IV initiation and maintenance of fluids;

~~[(v) intravenous (IV) initiation/maintenance fluids.]~~

(B) all required BLS and ALS equipment;

(C) ~~[with] transmitting 12-lead capability cardiac monitor-defibrillator~~ ~~[monitor/defibrillator by January 1, 2020]; and~~

(D) pharmaceuticals as required by medical director protocols.

(4) BLS with ALS Capability:

(A) all required BLS equipment, even when in-service ~~[in service]~~ or response ready at the ALS level; and

(B) all required ALS equipment, when in-service ~~[in service]~~ or response ready at the ALS level.

(5) BLS with MICU Capability:

(A) all required BLS equipment, even when in-service ~~[in service]~~ or response ready at the MICU level; and

(B) all required MICU equipment, when in-service [~~in service~~] or response ready at the MICU level.

(6) ALS with MICU Capability:

(A) all required ALS equipment, even when in-service [~~in service~~] or response ready at the MICU level; and

(B) all MICU equipment, when in-service [~~in service~~] or response ready at the MICU level.

(7) Wave form capnography or carbon dioxide detection equipment must be used when performing or monitoring endotracheal intubation.

(8) [(7)] In addition to medical supplies and equipment as defined in this subsection [(~~k~~) of ~~this section~~], EMS vehicles must also have:

(A) a complete and current copy of written or electronic formatted protocols approved and signed by the medical director, [;] with a current and complete equipment, supply, and medication list available to the crew;

(B) operable emergency warning devices;

(C) personal protective equipment for the EMS vehicle staff, including at least:

(i) protective, non-porous gloves;

(ii) medical eye protection;

(iii) medical respiratory protection [~~must be~~] available per crew member, meeting National Institute for Occupational Safety and Health (NIOSH)-approved [(NIOSH) approved] N95 or greater standards;

(iv) medical protective gowns or equivalent; and

(v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) portable, battery-powered flashlight (not a pen-light);

(G) a mounted, currently inspected, 5-pound [~~5 pound~~] ABC fire extinguisher (not applicable to air ambulances);

(H) "No Smoking" signs posted in the patient compartment and cab of vehicle;

(I) a current emergency response guidebook [~~guide book~~], or an electronic version that is available to the crew (for hazardous materials); and

(J) [~~each vehicle will carry~~] 25 triage tags, or participation in [~~coordination with~~] the RAC triage plan [~~Regional Advisory Council (RAC)~~].

(9) [(8)] As justified by specific patient needs, and when qualified personnel are available, EMS providers may appropriately utilize equipment in addition to what [~~that which~~] is required by the [~~their~~] authorization levels. Such equipment must be consistent with protocols and patient-specific [~~and/or patient-specific~~] orders and must correspond to personnel qualifications.

(l) National Accreditation [~~accreditation~~]. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the department may exempt the provider from portions of the license

process. In addition to other licensing requirements, accredited providers must [~~shall~~] submit:

(1) an accreditation self-study;

(2) a copy of the formal accreditation certificate; and

(3) any correspondence or updates to or from the accrediting organization that [~~which~~] impact the provider's status.

(m) Subscription or Membership Services. An EMS provider that operates or intends to operate a subscription or membership program for the provision of EMS within the provider's service area must [~~shall~~] meet all the requirements for an EMS provider license as established by, and rules adopted under, Texas [~~the~~] Health and Safety Code [;] Chapter 773. An EMS provider must [~~shall~~] obtain department approval prior to soliciting, advertising, or collecting subscription or membership fees. To obtain department approval for a subscription or membership program, the EMS provider must complete the following. [~~shall~~]

(1) Obtain written authorization from the highest elected official (county judge or mayor) [(~~County Judge or Mayor~~)] of the political subdivision [~~subdivision(s)~~] where subscriptions will be sold. Written authorization must be obtained from each county judge [~~County Judge~~] if subscriptions are to be sold in multiple counties.

(A) The county judge [~~County Judge~~] must provide written authorization [~~authorizations~~] if subscriptions are to be sold throughout a county.

(B) The mayor [~~Mayor~~] may provide written authorization if subscriptions are sold exclusively within the boundaries of an incorporated town or city.

(C) If an EMS provider is not the primary emergency provider in any area where they are going to sell a subscription plan, written notification must be provided to the participants receiving a subscription plan stating [~~that~~] the EMS provider [~~Provider~~] is not the primary emergency provider in that [~~this~~] area. A copy of this documentation must [~~should~~] be provided to the primary emergency provider and the department within 30 days before the beginning of any enrollment period.

(2) Submit a copy of the contract used to enroll participants.

(3) Maintain [~~The EMS provider shall maintain~~] a current file of all advertising for the service and submit [~~Submit~~] a copy of all advertising used to promote the subscription service within 30 days before the beginning of any enrollment period.

(4) Comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service.

(5) Provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be on a department bond form and be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self-insurance in an amount equal to the funds to be subscribed if the provider is a function of a governmental entity.

(6) Not deny emergency medical services to non-subscribers or subscribers of non-current status.

(7) Be reviewed at least every year. The [; ~~and the~~] subscription program may be reviewed by the department at any time.

(8) Furnish a list after each enrollment period with the names, addresses, dates of enrollment of each subscriber, and subscription fee paid by each subscriber.

(9) Furnish the department beginning and ending dates of enrollment periods ~~[period(s)]~~. Subscription service period ~~must [shall]~~ not exceed one year. Subscribers ~~must [shall]~~ not be charged more than a prorated fee for the remaining subscription service period ~~[that they subscribe for]~~.

(10) Furnish the department with the total amount of funds collected each year.

(11) Not offer membership nor accept members into the program who are Medicaid clients.

(n) Responsibilities of the EMS Provider ~~[provider]~~. During the license period, the EMS provider's responsibilities ~~must [shall]~~ include:

(1) assuring ~~[that]~~ all ~~response ready [response-ready]~~ and in-service vehicles are available 24 hours a day and seven days a week, maintained, operated, equipped, and staffed in accordance with the requirements of the provider's license, to include staffing, equipment, supplies, required insurance, and additional requirements per the current EMS provider's medical ~~director-approved [director-approved]~~ protocols and policies;

(2) ~~developing, implementing, maintaining, and evaluating [each EMS provider shall develop, implement, maintain, and evaluate]~~ an effective, ongoing, system-wide, data-driven, interdisciplinary quality assessment and performance improvement program, ~~that must[-]~~ ~~The program shall~~ be individualized to the provider and ~~[shall, at a minimum,]~~ include:

(A) the standard of patient care as directed by ~~[the]~~ medical ~~director [director's]~~ protocols and medical director input into the provider's policies and standard operating procedures;

(B) a complaint management system;

(C) monitoring the quality of patient care provided by the personnel and taking appropriate and immediate corrective action to ~~ensure [insure that]~~ quality of care is maintained in accordance with the existing standards of care and the ~~[provider] medical director [director's]~~ signed, approved protocols; ~~and~~

(D) ~~[the program shall include, but not be limited to,]~~ an ongoing program that achieves measurable improvement in patient care outcomes and reduction of medical errors;

(3) ~~providing [provide]~~ an attestation or ~~[provide]~~ documentation ~~[that]~~ its management staff will ~~begin~~ or continue to participate in the local ~~RAC [regional advisory council]~~;

(4) when an air ambulance is initiated through any other method than the local 9-1-1 ~~[911]~~ system, requiring the air service providing the air ambulance ~~[is required]~~ to notify the local 9-1-1 ~~[911]~~ center or the appropriate local response of ~~[system for]~~ the location of the response at time of launch; ~~this[-]~~ ~~This~~ would not include interfacility transports or ~~scheduled [schedule]~~ transports;

(5) ensuring ~~[that]~~ all personnel are currently certified or licensed by the department;

(6) assuring ~~[that]~~ all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by~~[-]~~ ~~at least,]~~ the last name and the first initial of the first name, the certification or license level, and the EMS provider's name; ~~a[-]~~ ~~A]~~ provider may utilize an alternative identification system in ~~incident-~~

~~specific [incident-specific]~~ situations that pose a potential for danger if the individuals are identified by name;

(7) assuring the confidentiality of ~~[all]~~ patient information ~~[is]~~ in compliance with ~~[all]~~ federal and state laws;

(8) assuring ~~[that]~~ Informed Treatment or Transport ~~[Treatment/Transport]~~ Refusal forms are signed by all persons refusing service, or documenting incidents when a signed Informed Treatment or Transport ~~[Treatment/Transport]~~ Refusal form cannot be obtained;

(9) assuring ~~[that]~~ patient care reports are completed accurately ~~[for all patients]~~ and meet standards as outlined in 25 ~~TAC [Texas Administrative Code,]~~ Chapter 103;

(10) assuring ~~[that]~~ patient care reports are provided to facilities receiving the patient:

(A) whenever operationally feasible, the report ~~must [shall]~~ be provided to the receiving facility at the time the patient is delivered, or a full written or ~~computer-generated [computer-generated]~~ report ~~[shall be]~~ delivered to the facility within 24 hours of the delivery of the patient;~~[-]~~

(B) if in a response-pending status, an abbreviated documented report ~~must [shall]~~ be provided at the time the patient is delivered and a completed written or ~~computer-generated [computer-generated]~~ report ~~[shall be]~~ delivered to the facility within 24 hours of the delivery of the patient;

(C) the abbreviated report ~~must [shall]~~ document~~[-]~~ ~~at a minimum,]~~ the patient's name ~~and[-]~~ ~~patient's]~~ condition upon arrival at the scene; the prehospital care provided; the patient's condition during transport, including signs, symptoms, and responses to treatment during the transport; the call initiation time; dispatch time; scene arrival time; scene departure time; hospital arrival time; and~~[-]~~ the identification of the ambulance staff; and

(D) in lieu of subparagraph (C) of this paragraph, personnel may follow the ~~RAC [Regional Advisory Council's]~~ process for providing abbreviated documentation to the receiving facility;~~[-]~~

(11) assuring ~~[that]~~ all pharmaceuticals are stored according to conditions specified in the pharmaceutical storage policy approved by the EMS provider's medical director;

(12) assuring ~~[that]~~ staff completes a readiness inspection as written by the EMS provider's policy;

(13) assuring ~~[that]~~ there is a preventive maintenance plan for vehicles and equipment;~~[-]~~

(14) assuring ~~[that]~~ staff has reviewed policies and procedures as approved by the EMS ~~provider [Provider]~~ and the EMS ~~provider medical director [Provider Medical Director]~~;

(15) ~~maintaining [Maintenance of]~~ medical reports;~~[-]~~

(A) a ~~[A]~~ licensed EMS provider ~~must [shall]~~ maintain adequate medical reports of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the EMS provider;~~[-]~~

(B) if ~~[If]~~ a patient was younger than 18 years of age when last treated by the provider, the medical reports of the patient ~~must [shall]~~ be maintained by the EMS provider until the patient reaches age 21 years or for seven years from the date of last treatment, whichever is longer;~~[-]~~

(C) ~~an [An]~~ EMS provider may destroy medical records that relate to any civil, criminal, or administrative proceeding only if the provider knows the proceeding has been finally resolved;~~[-]~~

(D) EMS providers must [~~shall~~] retain medical records for a longer length of time [~~than that imposed herein~~] when mandated by other federal or state statute or regulation;[-]

(E) EMS providers may transfer ownership of records to another licensed EMS provider only if the EMS provider, in writing, assumes ownership of the records and maintains the records consistent with this chapter;[-]

(F) destruction [~~Destruction~~] of medical records must [~~shall~~] be done in a manner that ensures continued confidentiality;[-]

(G) at [A~~t~~] the time of initial licensing and at each license renewal, the EMS provider and medical director must attest or provide documentation to the department, a plan for [the] going out of business, selling, or transferring the business to ensure the proper maintenance of [the] medical records [~~record~~] as outlined in subparagraph (E) of this paragraph; and[-]

(H) the EMS [~~The emergency medical services~~] provider must maintain all patient care records in the physical location that is the provider's primary place of business, unless the department approves an alternate location;[-]

(16) assuring [that] all requested patient records are made promptly available to the medical director, hospital, or department [~~when requested~~];

(17) assuring [that] current protocols, equipment, supply and medication lists, and the correct original vehicle authorization [~~Vehicle Authorization~~] at the appropriate level, are maintained on each response ready [~~response-ready~~] vehicle;

(18) monitoring and enforcing compliance with all policies and protocols;

(19) assuring provisions for the appropriate disposal of medical or [~~and/or~~] biohazardous waste materials;

(20) assuring ongoing compliance with the terms of first responder agreements;

(21) assuring that all documents, reports, or information provided to the department and hospital are current, accurate, and complete;

(22) assuring compliance with all federal and state laws and regulations and all local ordinances, policies, and codes, at all times;

(23) assuring [that] all response data required by the department are [~~is~~] submitted in accordance with §103.5 of this title (relating to Reporting Requirements for EMS Providers);

(24) assuring [that], whenever there is a change in the EMS provider's name or the service's operational assumed name, the printed name on the vehicles is [~~are~~] changed accordingly within 30 days of the change;

(25) assuring [that] the department is notified within 30 business days whenever:

(A) a vehicle is sold, substituted, or replaced;

(B) there is a change in the level of service;

(C) there is a change in the declared service area as written on an initial or renewal application;

(D) there is a change in the official business mailing address;

(E) there is a change in the physical location of the business or [~~and/or~~] substations;

(F) there is a change in the physical location of patient report file storage, to assure [that] the department has access to these records at all times; or [~~and~~]

(G) there is a change of the administrator of record;[-]

(26) assuring the department is notified within one business day [that] when there is a change of the medical director [~~has occurred the department is notified within one business day~~];

(27) developing, implementing, and enforcing [~~develop, implement and enforce~~] written operating policies and procedures required under this chapter or [~~and/or~~] adopted by the licensee, assuring [~~Assure that~~] each employee (including volunteers) is provided a copy upon employment and whenever such policies or [~~and/or~~] procedures are changed; a[- A] copy of the written operating policies and procedures must [~~shall~~] be made available to the department on request, and policies [~~olicies~~] at a minimum must [~~shall~~] adequately address:

(A) personal protective equipment;

(B) immunizations available to staff;

(C) infection control procedures;

(D) management of possible exposure to communicable disease;

(E) emergency vehicle operation;

(F) contact information for the designated infection control officer for whom education based on U.S. Code[-] Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff-136 [~~§300ff- 136~~] has been documented;[-]

(G) credentialing of new response personnel before being assigned primary care responsibilities, which must [~~The credentialing process shall~~] include at [~~as~~] a minimum:

(i) a comprehensive orientation session of the services, policies, [~~and~~] procedures, treatment and transport protocols, safety precautions, and the quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person;[-]

(H) appropriate documentation of patient care; [~~and~~]

(I) vehicle checks, equipment, and readiness inspections; and

(J) the security of medications, fluids, and controlled substances in compliance with local, state, and federal laws or rules;[-]

(28) assuring [that] manufacturers' operating instructions for all critical patient care electronic and [~~and/or~~] technical equipment utilized by the provider are available for all response personnel;

(29) assuring [that] the department is notified within five business days of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever:

(A) the vehicle is rendered disabled and inoperable at the scene of the occurrence; or

(B) there is a patient on board;[-]

(30) assuring [that] the department is notified within one business day of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever there is personal injury or death to any person;

(31) maintaining motor vehicle liability insurance as required under the Texas Transportation Code;

~~(32) maintaining professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient;~~

(32) ~~(33)~~ ensuring ~~[insuring]~~ continuous coverage for the service area defined in documents submitted with the EMS provider application;

(33) ~~(34)~~ responding to requests for assistance from the highest elected official of a political subdivision or from the department during a declared emergency or mass casualty situation according to national, state, regional, or ~~[and/or]~~ local plans, when authorized;

(34) ~~(35)~~ providing written notice to the department, RAC, and Emergency Medical Task Force, if the EMS provider will make staff and equipment available during a declared emergency or mass casualty situation, for a state or national mission, when authorized;

(35) ~~(36)~~ assuring all EMS personnel receive continuing education on the provider's anaphylaxis treatment protocols, and ~~the~~ provider ~~must~~ ~~[shall]~~ maintain education and training records to include date, time, and location of such education or training for all its EMS personnel;

(36) ~~(37)~~ immediately ~~notifying~~ ~~[notify]~~ the department in writing when operations cease in any service area;

(37) ~~(38)~~ assuring ~~[assure that]~~ all patients transported by stretcher are ~~[must be]~~ in a ~~department-authorized~~ ~~[department-authorized]~~ EMS vehicle; and

(38) ~~(39)~~ developing or adopting ~~[develop or adopt]~~ and then implementing ~~[implement]~~ policies, procedures, and protocols necessary for its operations as an EMS provider, and enforcing ~~[enforce]~~ all such policies, procedures, and protocols.

(o) License Renewal Process ~~[renewal process]~~.

(1) The provider is responsible for requesting ~~[It shall be the responsibility of the provider to request]~~ license renewal application information.

(2) EMS providers ~~must~~ ~~[shall]~~ submit a completed application, all other required documentation, and a nonrefundable license renewal fee, no later than 90 calendar days prior to the expiration date of the current license.

(A) If ~~[When]~~ a complete renewal application is received by the department 90 or more calendar days prior to the expiration date of the current license, ~~[that is to be renewed,]~~ the applicant ~~must~~ ~~[shall]~~ submit a nonrefundable application fee of \$400 per provider plus \$180 for each EMS vehicle.

(B) If ~~[When]~~ a complete renewal application is received by the department 60 or more days, but less than 90 calendar days, prior to the expiration date of the current license, ~~[that is to be renewed,]~~ the applicant ~~must~~ ~~[shall]~~ submit a nonrefundable application fee of \$450 per provider plus \$180 for each EMS vehicle.

(C) If ~~[When]~~ a complete renewal application is received by the department less than 60 days prior to the expiration of the current license, the applicant ~~must~~ ~~[shall]~~ submit a nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle.

(D) If the application for renewal is received by the department after the expiration date of the current license, ~~[it is deemed to be untimely filed and]~~ that license expires on its expiration date. The EMS provider will be required to file a new initial application and follow the initial application process.

(E) An EMS provider may not operate after its license has expired.

(p) Provisional License. The department may issue an EMS provisional license if an urgent need exists in a service area when the department finds ~~[that]~~ the applicant is in substantial compliance with the provisions of this section and if the public interest would be served. A provisional license ~~is~~ ~~[shall be]~~ effective for no more than 30 days from the date of issuance.

(1) An EMS provider may apply for a provisional license by submitting a written request and a nonrefundable fee of \$30.

(2) A provisional license issued by the department may be revoked at any time by the department, with written notice to the provider, when the department finds ~~[that]~~ the provider is failing to provide appropriate service in accordance with this section or ~~[that]~~ the provider is in violation of any of the requirements of this chapter.

(q) Advertisements.

(1) Any advertising by an EMS provider ~~must~~ ~~[shall]~~ not be misleading, false, or deceptive. When an EMS provider advertises in Texas or ~~[and/or]~~ conducts business in Texas by regularly transporting patients from~~[,]~~ or within Texas, the provider ~~is~~ ~~[shall be]~~ required to have a Texas EMS provider license ~~[Provider License]~~.

(2) An EMS provider ~~must~~ ~~[shall]~~ not advertise levels of patient care ~~that~~ ~~[which]~~ it cannot provide at all times. The provider ~~must~~ ~~[shall]~~ not use a name, logo, artwork ~~[art work]~~, phrase, or language that could mislead the public to believe a higher level of care is being provided.

(3) An EMS provider that has more than five paid staff, but is composed of at least 75 percent ~~[75%]~~ volunteer EMS personnel, may advertise as a volunteer service.

(r) Surveys, Inspections, ~~[Surveys/Inspections]~~ and Investigations.

(1) The department may conduct scheduled or unannounced on-site inspection or investigation of a provider's vehicles, offices, headquarters, and stations ~~[office(s), headquarter(s) and/or station(s)]~~ (hereinafter operations), at any reasonable time, including while services are being provided, to ensure compliance with Texas Health and Safety Code~~[,]~~ Chapter 773 and this chapter.

(2) An applicant or licensee, by applying for or holding a license, consents to entry and inspection or investigation of any of its operations by the department, as provided for by Texas ~~[the]~~ Health and Safety Code~~[,]~~ Chapter 773 and this chapter.

(3) Department ~~[Department's]~~ inspections or investigations to evaluate an EMS provider's compliance with the requirements of Texas ~~[the]~~ Health and Safety Code~~[,]~~ Chapter 773 and this chapter, may include:

(A) initial, prelicensure, and change in status inspections for the issuance of a new license;

(B) routine inspection conducted at the department's ~~[departments']~~ discretion or prior to renewal;

(C) follow-up on-site inspection, conducted to evaluate implementation of a plan of correction for deficiencies cited during a department investigation or inspection;

(D) a complaint investigation, conducted in response to a report or complaint, as described in subsection (u) of this section, relating to complaint investigations; and

(E) an inspection to determine if a person, company, or organization is offering or providing EMS service [service(s)] without a license, or to determine if EMS vehicles are being staffed by persons who do not hold Texas EMS certification or license.

(4) The provider and medical director must [shall] cooperate with any department investigation or inspection, and must [shall], consistent with applicable law, permit the department to examine the provider's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the provider, that are necessary to evaluate compliance with applicable statutes, rules, plans of correction, and orders with which the EMS provider is required to comply. The EMS provider must [shall] permit the department, consistent with applicable law, to interview members of the governing authority, personnel, and patients.

(5) The EMS provider must [shall], consistent with applicable law, permit the department to copy or reproduce, or must [shall] provide photocopies to the department of any requested records or documents. If it is necessary for the department to remove records or other information (other than photocopies) from the provider's premises, the department will provide the EMS provider's governing authority or designee with a written statement of this fact, describing the information being removed and when it is expected to be returned. The department will make a reasonable effort, consistent with the circumstances, to return the records the same day.

(6) The department holds [will hold] an entrance conference with the EMS provider, governing authority, or designee before beginning the inspection or investigation, to explain, consistent with applicable law, the nature, scope, and estimated time schedule of the inspection or investigation.

(7) Except for a complaint investigation or a follow-up visit, an inspection includes [will include] an evaluation of compliance with Texas [the] Health and Safety Code[, Chapter 773 and the rules of this chapter. During the inspection, the department representative [will], unless otherwise provided for by law, informs [inform] the EMS provider's governing authority or designee of the preliminary findings and gives [give] the provider a reasonable opportunity to submit additional facts or other information to the department representative in response to those findings.

(8) When the inspection is complete, the department holds [will hold] an exit conference with the provider, unless otherwise provided for by law, to inform the provider, to the extent permitted by law, of any preliminary findings of the inspection or investigation and gives [to give] the EMS provider the opportunity to provide additional information regarding the deficiencies cited. If no deficiencies are identified at the time of inspection, a statement indicating this fact may be left with the EMS provider's governing authority or designee. Such a statement does not constitute a department finding or certification [that] the facility is in compliance.

(9) If deficiencies are cited,[:]

[(A)] the department provides [will provide] the EMS provider's administrator of record and medical director with a written deficiency report no more than 30 calendar days after the exit conference.

(A) [(B)] The EMS provider's governing authority, designee, or person in charge at the time must [shall] sign an acknowledgement of the inspection and receipt of the written deficiency report and return it to the department. The signature does not indicate the

EMS provider's agreement with, or admission to, the cited deficiencies unless the agreement or admission is explicitly stated.

(B) [(C)] No later than 30 calendar days after the EMS provider's receipt of the deficiency report, the EMS provider must [shall] return a written plan of correction to the department for each deficiency, including time frames for implementation, together with any additional evidence of compliance the EMS provider may have, regarding any cited deficiency. The department determines [will determine] if the written plan of correction and proposed time frames [timeframes] for implementation are acceptable. If the plan is not acceptable, the department notifies [will notify] the provider in writing no later than 30 days after receipt and requests [request] a modified plan. The EMS provider must [shall] modify and resubmit the plan of correction no later than 30 calendar days after the EMS provider's receipt of the request. The EMS provider must [shall] correct the identified deficiencies and submit documentation to the department verifying completion of the corrective action within the time frames [timeframes] set forth in the plan of correction accepted by the department, or as otherwise specified by the department. The provider will be deemed to have received the deficiency report or other department correspondence mailed under this subparagraph once the department receives delivery notification from the postal service [three days after mailing].

(C) [(D)] Regardless of the EMS provider's compliance with this subsection, the department's acceptance of the provider's plan of correction, or the provider's utilization of an informal compliance group review under paragraph (10) of this subsection, the department may, at any time, propose to take action as appropriate under §157.16 of this subchapter [title] (relating to Emergency Suspension, Suspension, Probation, Revocation, Denial of a Provider License or Administrative Penalties).

(10) The department inspector informs [will inform] the provider's chief executive officer, designee, or person in charge at the time of the inspection, of the provider's right to an informal compliance group review. This review is available[:] when there is disagreement with deficiencies cited by the inspector or investigator, which [that] the provider was unable to resolve through submission of information to the inspector or additional information bearing on the deficiencies cited.

(11) The department refers [shall refer] issues and complaints relating to the conduct or actions by licensed professionals to the [their] appropriate licensing boards.

(12) All initial applicants and the [their] medical director must [shall be required to] have an initial compliance survey by the department that evaluates all aspects of the applicant's proposed operations, including clinical care components and an inspection of all vehicles prior to the issuance of a license.

(13) At renewal, randomly, or in response to a complaint, the department may conduct an unannounced compliance survey that includes inspection of a provider's vehicles, operations, or [and/or] records to ensure compliance with this title at any time, including nights or weekends.

(14) If a re-survey or inspection [re-survey/inspection] to ensure correction of a deficiency is conducted, the provider must [shall] pay a nonrefundable fee of \$30 per vehicle needing a re-inspection.

(s) Specialty Care Transports. A Specialty Care Transport is defined as the interfacility transfer by a department-licensed [department-licensed] EMS provider of a critically ill or injured patient requiring specialized interventions, monitoring, or [and/or] staffing.



To qualify to function as a Specialty Care Transport the following minimum criteria must [shall] be met.[:]

(1) Qualifying Interventions:

(A) patients with one or more of the following IV infusions: vasopressors; vasoactive compounds; antiarrhythmics; fibrinolytics; tocolytics; blood; ~~or~~ blood products; or [and/or] any other parenteral pharmaceutical unique to the patient's special health care needs; and

(B) one or more of the following special monitors or procedures: mechanical ventilation; multiple monitors; cardiac balloon pump; external cardiac support (ventricular assist devices, etc.); and any other specialized device, vehicle, or procedure unique to the patient's health care needs.

(2) Equipment. All specialized equipment and supplies appropriate to the required interventions must [shall] be available at the time of the transport.

(3) Minimum Required Staffing.

(A) One currently certified EMT-Basic and one currently certified or licensed paramedic with the additional training as defined in paragraph (4) of this subsection; or[:]

(B) a currently certified EMT-Basic and a currently certified or licensed paramedic accompanied by at least one of the following:

(i) a registered nurse [Registered Nurse] with special knowledge of the patient's care needs;

(ii) a certified respiratory therapist [Respiratory Therapist];

(iii) a licensed physician; or[:]

(iv) any other licensed health care professional designated by the transferring physician.

(4) Additional Required Education and Training for Certified or Licensed [Certified/Licensed] Paramedics:

(A) evidence [Evidence] of successful completion of post-paramedic education;[:]

(B) training and [appropriate] periodic skills verification in management of patients on ventilators;[:]

(C) training and periodic skills verification in 12 lead Electrocardiography (EKG) or [EKG and/or] other critical care monitoring devices;[:]

(D) training and periodic skill verification in drug infusion pumps, and cardiac or [and/or] other critical care medications; and [: or]

(E) training in any other specialized procedures or devices determined at the discretion of the EMS provider's medical director.

(t) For all initial applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by Texas Government Code Section 2054.252 (relating to State Electronic Internet Portal Project), [the Texas Online Authority] to recover costs associated with the initial application and renewal application processing [through Texas Online].

(u) Complaint Investigations.

(1) Upon request, all licensed EMS providers must [Providers shall] make available for a patient or [its] legal guardian

a written statement, supplied by the department, identifying the department as the responsible agency for conducting EMS provider and EMS personnel complaint investigations. The statement must [shall] inform persons [that] they may direct a complaint to the Department of State Health Services, EMS Compliance Unit [Group], by phone, or by email. The statement must [shall] provide the most current contact information, including the appropriate department group, address, local and toll-free telephone number, and email address for filing a complaint.

(2) The department evaluates all complaints made against EMS providers or [and/or] EMS personnel. Any complaint submitted to the department must [shall] be submitted by telephone, electronically, or in writing, using the department's current contact information for that purpose, as described in paragraph (1) of this subsection.

(3) The department documents, evaluates, and prioritizes [will document, evaluate and prioritize] complaints and information received, based on the seriousness of the alleged violation and the level of risk to patients, personnel, and [and/or] the public.

(A) Allegations [~~determined to be~~] within the department's regulatory jurisdiction relating to emergency medical services are authorized for investigation under this chapter. Complaints received that are outside the department's jurisdiction may be referred to another appropriate agency for response.

(B) The investigation is conducted on-site, by telephone, and [and/or] through written correspondence.

(4) The department conducts a prompt and thorough investigation of all reports or complaint allegations that may pose a threat of harm to the health and safety of patients or participants. Reports or complaints received by the department concerning alleged abuse, neglect, and exploitation will be addressed in accordance with Texas Human Resources Code[:] Chapter 48 and Texas Family Code[:] §261.101[~~(d)~~].

(5) The department evaluates complaint allegations that do not pose a significant risk of harm to patients. Based on the nature and severity of the alleged incident, the department determines whether to investigate the complaint directly or to require the provider to conduct an internal investigation and submit its findings and supporting evidence to the department.

(A) The department reviews findings of an EMS provider's internal investigation [~~will be reviewed by the department~~] and may perform [~~result in~~] an additional investigation by the department. The department may [: a] request [~~for~~] a plan of correction [~~to~~] be completed by the provider in accordance with subsection (r) [(~~q~~)] of this section (relating to inspections and investigations), and [and/or] a proposal to take action against the provider under §157.16 of this subchapter [title].

(B) The EMS provider under investigation must [shall] provide department staff access to all documents, evidence, and individuals related to the alleged violation, including all evidence and documentation relating to any internal investigations.

(6) Once an internal EMS provider investigation or [and/or] department investigation is complete, the department reviews the evidence from the investigation to evaluate whether the evidence substantiates the complaint and what corrective action, if any, is needed.

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 October 9, 2024.

TRD-202404803

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 834-6737



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 745. LICENSING

#### SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

#### DIVISION 2. EXEMPTIONS FROM REGULATION

##### 26 TAC §745.117

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §745.117, concerning Which programs of limited duration are exempt from Licensing regulation.

##### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Section 115 of House Bill (H.B.) 4559, 88th Legislature, Regular Session, 2023. This section of H.B. 4559 amended a requirement in Texas Human Resources Code (HRC) §42.041, which identifies certain programs that meet the definition of "child-care facility" in HRC §42.002(3) that are exempt from requiring a license under HRC Chapter 42. HRC §42.041(b)(3) includes an exemption for a program that provides short-term child care that meets certain requirements in connection with a shopping center, business or other activity. In turn, HRC §42.041(g) limits the number of hours a week that a certain type of program that meets this exemption language may operate. H.B. 4559 amended the requirements in HRC Section 42.041(g). Prior to the effective date of H.B. 4559, HRC Section 42.041(g) limited a program exempt under HRC Section 42.041(b)(3) to providing a maximum of 15 hours per week of childcare to an individual child if the program (1) provides child-care so that a person may attend an educational class provided by a nonprofit entity and (2) is located in a county that has a population of 800,000 and on an international border. H.B. 4559 amended the population requirement so that the limits in Subsection (g) apply if the program is located in a county with a municipality with a population of at least 500,000. Accordingly, HHSC Child Care Regulation (CCR) is proposing to update §745.117 to reflect the amended statutory language.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.117 in (1)(D)(ii) in Figure: 26 TAC §745.117, updates the criteria for exemption to reflect that the program must be located in a county with a municipality with a population of 500,000; (2) replaces "regulation" with "oversight"; (3) replaces "Licensing" and "our" with Child Care Regulation (CCR); and (4) updates a reference in the figure.

##### FISCAL NOTE

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

##### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

##### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

##### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

##### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be a rule with language that is consistent with state statute.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any additional costs or fees on persons required to comply with this rule.

##### TAKINGS IMPACT ASSESSMENT

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

##### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Iden by email at [Dana.Iden@hhs.texas.gov](mailto:Dana.Iden@hhs.texas.gov).

Written comments on the proposal may be submitted to Dana Iden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 24R071" 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 system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

*§745.117. Which programs of limited duration are exempt from Child Care Regulation (CCR) oversight [Licensing regulation]?*

The following programs of limited-duration are exempt from CCR [our] regulation:

Figure: 26 TAC §745.117

[Figure: 26 TAC §745.117]

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

Filed with the Office of the Secretary of State on October 9, 2024.

TRD-202404808

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 438-3269



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS DIVISION 3. INSPECTION FEES

##### 28 TAC §34.340

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §34.340, concerning payment of inspection fees. The proposed amendment will enhance efficiency and remove a limitation requiring outdated payment methods.

**EXPLANATION.** The proposed amendment to §34.340 adds the option of using online payment for inspection payments. This change will make the payment process more efficient for both staff and customers. The State Fire Marshal's Office is working on new technology to enable electronic payments, which will simplify transactions and offer more convenience.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Chuck Allen, Assistant State Fire Marshal, has determined that during each year of the first five years the proposed amendment is in effect, there will be no fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by statute. Assistant Chief Allen made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Assistant Chief Allen does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Assistant Chief Allen expects that administering the proposed amendment will have the public benefit of ensuring that the public and TDI staff have more current and efficient payment options for inspection fees.

Assistant Chief Allen expects that the proposed amendment will not increase the cost of compliance with §34.340 because the amendment expands the options on how to pay inspection fees. Inspection requests paid online may require an additional service fee. However, requests can continue to be paid by check or money order.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost of the inspections has not changed; rather, the options of payment modes have expanded. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 25, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on November 25, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes the amendment to §34.340 under Government Code §417.005 and §417.008(f), and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of duties.

Government Code §417.008(f) provides that the commissioner, by rule, must prescribe a reasonable fee for an inspection performed by the state fire marshal.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 34.340 implements Government Code §417.008(f).

*§34.340. Inspection Fees For Requested Inspections.*

(a) The commissioner adopts by reference the Inspection Request Form for use to request a fire safety inspection by the State Fire Marshal's Office. This form is published by and available from the State Fire Marshal's Office.

(b) The amount of money a person requesting an inspection must pay to the department for a state fire marshal fire safety inspection is listed in paragraphs (1) - (7) of this subsection. If the building includes more than one building type as listed in paragraphs (1) - (7) of this subsection, then the requester must pay for the most expensive building type that the building includes, plus the amount of money specified in paragraph (8) of this subsection.

- (1) Licensed adult or child day care facility or foster home--\$75;
- (2) Licensed nursing home, assisted living or board and care facility, or school--\$100;

(3) Apartment building, hotel, motel, lodge, or rooming house--\$150;

(4) Assembly occupancy, restaurant, or other commercial facility--\$150;

(5) Industrial facility or warehouse--\$200;

(6) Private prison or jail--\$200;

(7) Other building not listed in paragraphs (1) - (6) of this subsection:

(A) less than 25,000 square feet--\$100;

(B) 25,000 square feet to less than 100,000 square feet--\$200; and

(C) 100,000 square feet or greater--\$300.

(8) Each additional building after the first--\$25.

(c) To obtain an inspection, a person requesting an inspection must submit the Inspection Request Form to the State Fire Marshal's Office. The form and payment must be submitted as specified in the Inspection Request Form. All payments are nonrefundable.

(d) A person submitting an inspection request must pay the inspection fee by cashier's check or money order made payable to the Texas Department of Insurance or online payment at the time the Inspection Request Form is submitted to the state fire marshal.

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 October 8, 2024.

TRD-202404781

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 676-6555



## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 120. COMPENSATION PROCEDURE--EMPLOYERS

#### 28 TAC §120.2

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §120.2, concerning employer's first report of injury and notice of injured employee rights and responsibilities. Section 120.2 implements Texas Labor Code §404.109.

**EXPLANATION.** The proposed amendments correct the addresses and websites contained in 28 TAC §120.2 to reflect the correct current addresses and websites of DWC and the Office of Injured Employee Counsel (OIEC). The amendments are necessary to ensure that the information in the rule is current and accurate. The proposed amendments also make updates for plain language and agency style.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Business Process Tammy Campion has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Campion does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Campion expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Campion expects that the proposed amendments will not increase the cost to comply with Labor Code §404.109 because they do not impose requirements beyond those in the statute and do not create obligations beyond those in the current rule. As a result, any cost associated with the address and website updates does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments only update addresses and websites and make updates for plain language and agency style. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments only update addresses and websites and make updates for plain language and agency style. They do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on November 25, 2024. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §120.2 under Labor Code §§404.109, 402.00111, 402.00116, and 402.061.

Labor Code §404.109 provides that the public counsel of OIEC shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 120.2(e) implements Labor Code §404.109, enacted by House Bill (HB) 7, 79th Legislature, Regular Session (2005) and last amended by HB 673, 81st Legislature, Regular Session (2009).

*§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.*

(a) - (d) (No change.)

(e) The Public Counsel must ~~shall~~ adopt the Notice of Rights and Responsibilities after consultation with the commissioner of workers' compensation [~~Commissioner of Workers' Compensation~~]. Until the Public Counsel adopts any new notice in accordance with Labor Code §404.109, the notice previously adopted under this section will ~~shall~~ remain in effect. A copy of the Notice of Rights and Re-

sponsibilities adopted by the Public Counsel will [shall] be distributed through or provided at:

(1) the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov) [[www.tdi.state.tx.us](http://www.tdi.state.tx.us)];

(2) the Office of Injured Employee Counsel's website at [www.oiec.texas.gov](http://www.oiec.texas.gov) [[www.oiec.state.tx.us](http://www.oiec.state.tx.us)];

(3) The Texas Department of Insurance, Division of Workers' Compensation, 1601 Congress Avenue, Austin, Texas, 78701 [7551 Metro Center Drive, Suite 100, Austin, Texas, 78744] or any office of the Texas Department of Insurance, Division of Workers' Compensation; or

(4) The Office of Injured Employee Counsel, 1601 Congress Avenue, Austin, Texas, 78701 [7551 Metro Center Drive, Suite 100, Austin, Texas, 78744] or any office of the Office of Injured Employee Counsel.

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on October 10, 2024.

TRD-202404820

Kace Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 804-4703



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER D. DRIVER IMPROVEMENT

##### 37 TAC §15.89

The Texas Department of Public Safety (the department) proposes amendments to §15.89, concerning Moving Violations. This proposed amendment modifies the list of traffic offenses that constitute a moving violation and identifies what a moving violation does and does not include.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated

as a result of these rules will be publication of an updated list of traffic offenses that constitute a moving violation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing 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 is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code; and §542.304 which authorizes the department to designate by rule the offenses involving the operation of a motor vehicle that constitute a moving violation of the traffic law.

Texas Government Code, §411.004(3); and Texas Transportation Code §521.005 and §542.304, are affected by this proposal.

##### §15.89. *Moving Violations.*

(a) Moving violations are an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance.

(b) A list of traffic offenses that constitute a moving violation is detailed in the graphic in this subsection.

Figure: 37 TAC §15.89(b)

[Figure: 37 TAC §15.89(b)]

##### (c) Moving violations include:

(1) a violation of the traffic law of this state, another state, or a political subdivision of this or another state; and

(2) an offense under Texas Transportation Code, §545.412.

(d) Moving violations do not include:

(1) an offense committed before September 1, 2003;

(2) the offense of speeding when the person convicted was at the time of the offense driving less than 10 percent faster than the posted speed limit, unless the person committed the offense in a school crossing zone;

(3) an offense adjudicated under Code of Criminal Procedure, Chapter 45A, Subchapter G or H; or

(4) an offense under Texas Transportation Code, §545.4251.

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 October 11, 2024.

TRD-202404823

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



## CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

### 37 TAC §§23.1, 23.3, 23.5, 23.6

The Texas Department of Public Safety (the department) proposes amendments to §§23.1, 23.3, 23.5, and 23.6, concerning Vehicle Inspection Station And Vehicle Inspector Certification. The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including elimination of driving while intoxicated as a disqualifying offense for licensure and changing the license renewal dates from August 31 to December 31 to align with discontinuation of the safety inspection program on January 1.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government.

Ms. Whittenton has also determined that the proposed amendments may result in an adverse economic effect on small businesses and micro-businesses, but there will be no adverse economic effect on rural communities. The estimated number of inspection stations licensed to perform non-commercial safety inspections is 10,951. It is estimated that 219 of these inspection stations are small businesses and 10,732 are micro-businesses. Therefore, there are an estimated 10,951 small or micro-businesses that may be adversely economically impacted by these proposed amendments implementing House Bill 3297, which eliminates the safety inspection program for personal (non-commercial) vehicles.

The estimated economic impact from the loss of revenue from safety inspections for a small or micro-business will be an average of approximately \$8,509 per year. This is based on the total number of 13,311,043 safety inspections conducted last year, multiplied by \$7.00 (the safety inspection fee), divided by the total number of all stations licensed to conduct safety inspections (10,951). There are no alternative methods that the department may consider in mitigating these effects under a regulatory flexibility analysis because these proposed amendments are required by legislation and involve the removal of provisions that will otherwise be null and void on January 1, 2025.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be the implementation of legislation and clarity and transparency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does eliminate a government program; it will eliminate current employee positions; it will not require an increase or decrease in future legislative appropriations to the agency; and it will decrease fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does limit an existing regulation. The proposed rulemaking does decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.511, which authorizes the Public Safety Commission to adopt a system by rule under which licenses expire on various dates during the year; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.301(b), which authorizes the Public Safety Commission to establish by rule a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission; §548.401, which authorizes the Department of Public Safety to adopt rules for

the certification of inspectors and inspection stations; §548.403, which authorizes the Department of Public Safety to adopt rules for the certification of inspection stations; and §548.4055, which authorizes the Public Safety Commission to adopt rules necessary to comply with Occupations Code, Chapter 53.

Texas Government Code, §411.004(3) and §411.511; Texas Transportation Code, §548.002, §548.003, §548.201, §548.202, §548.301(b), §548.401 §548.402 §548.403, §548.404, §548.405, §548.4055, §548.407 and §548.410; and Texas Occupations Code, Chapter 53 are affected by this proposal.

§23.1. *New or Renewal Vehicle Inspection Station Applications.*

(a) Applicants for new or renewal vehicle inspection station certification must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspection station application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspection station application must include, but is not limited to, the items listed in paragraphs (1) - (3) of this subsection:

(1) Criminal history disclosure of all convictions for the applicant or, if the applicant is an entity other than an individual, for the executive officer or other individual specifically authorized by the entity to sign the application;

(2) Proof of ownership and current status as required by the department. Such proof includes, but is not limited to, a current Certificate of Fact [of Existence or Certificate of Authority] from the Texas Secretary of State and a Certificate of Account Status [Good Standing] from the Texas Comptroller of Public Accounts; and

(3) Payment of the vehicle inspection station nonrefundable new and renewal application fee of \$100.

(d) If an incomplete new or renewal vehicle inspection station application is received, notice will be sent to the applicant stating the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspection station applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the information, the application will be considered withdrawn and a new application must be submitted.

(f) A new or renewal vehicle inspection station application is complete when:

(1) It contains all items, including proof of identification, as required by the department.

(2) It conforms to Texas Transportation Code, Chapter 548 [the Act], this chapter, and the Texas vehicle inspection program's instructions.

(3) All fees are paid pursuant to Texas Transportation Code, Chapter 548 [the Act] and this chapter.

(4) All requests for additional information are satisfied.

(g) The vehicle inspection station certificate will expire on December [August] 31 of the odd numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspection station certification issued by the department is conditional upon the receipt of criminal history record information.

(i) For a new or renewal vehicle inspection station application to be approved, the owner must:

(1) be at least 18 years of age;

~~[(2) provide proof of identification as required by the department;]~~

(2) ~~[(3)]~~ not be currently suspended or revoked in the Texas vehicle inspection program;

~~[(4) complete department provided training;]~~

(3) ~~[(5)]~~ have a facility that meets the standards for the appropriate class set forth in this chapter;

(4) ~~[(6)]~~ have equipment that meets the standards set forth in §23.13 of this title (relating to Equipment Requirements for Commercial Safety [All Classes of Vehicle] Inspection Stations); and

(5) ~~[(7)]~~ meet all other eligibility criteria under Texas Transportation Code, Chapter 548 [the Act] or this chapter.

(j) Certificate holders of vehicle inspection stations must submit a new application, including applicable fees, to change a location~~;~~ or make a change of ownership.

(k) Applicants for new or renewal vehicle inspection station certification must apply for one of the classes defined in paragraphs (1) - (3) of this subsection:

(1) Public--A station open to the public performing inspections on vehicles presented by the public. Stations open to the public will not be issued a fleet vehicle inspection station license unless such stations are currently certified as a public vehicle inspection station [stations];

(2) Fleet--A station not providing vehicle inspection services to the public; or

(3) Government--A station operated by a political subdivision~~;~~ or agency of this state.

(l) Failure to meet the requirements of subsection (i) of this section will result in the denial of the application.

§23.3. *New or Renewal Vehicle Inspector Applications.*

(a) Applicants for a new or renewal vehicle inspector certificate must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspector application~~[ form]~~, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspector application must include, but is not limited to, the items listed in paragraphs (1) and (2) of this subsection:

(1) Criminal history disclosure of all convictions of the vehicle inspector applicant; and

(2) Payment of the new or renewal vehicle inspector nonrefundable application fee of \$25.

(d) If an incomplete new or renewal vehicle inspector application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspector applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the information, the application will be considered withdrawn.



(f) A new or renewal vehicle inspector application is complete when:

(1) It contains all items required by the department.

(2) It conforms to Texas Transportation Code, Chapter 548 [the Act], this chapter, and the Texas vehicle inspection program's instructions.

(3) All fees are paid pursuant to Texas Transportation Code, Chapter 548 [the Act] and this chapter.

(4) All requests for additional information are satisfied.

(5) The applicant has completed department provided training as outlined in this chapter.

(6) The applicant has passed an examination with a grade of not less than 80 on Texas Transportation Code, Chapter 548, this chapter, and regulations of the department pertinent to the Texas vehicle inspection program.

(7) The applicant has successfully demonstrated the ability to correctly operate the required testing devices (commercial inspectors only).

(g) The new or renewal vehicle inspector certificate will expire on December [August] 31 of the even numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspector certification issued by the department is conditional upon the receipt of criminal history record information.

(i) For a new or renewal vehicle inspector application to be approved the applicant must:

(1) be at least 18 years of age;

(2) provide the applicant's driver license number [hold a valid driver license to operate a motor vehicle in Texas];

(3) not be currently suspended or revoked in the Texas vehicle inspection program; and

~~{(4) complete department provided training as outlined in this chapter;}~~

~~{(5) pass with a grade of not less than 80, an examination on the Act, this chapter, and regulations of the department pertinent to the Texas vehicle inspection program;}~~

~~{(6) successfully demonstrate ability to correctly operate the testing devices; and}~~

(4) ~~{(7)}~~ meet all other eligibility criteria under Texas Transportation Code, Chapter 548 [the Act] or this chapter.

*§23.5. Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.*

(a) Vehicle inspection stations and vehicle inspectors are entrusted with ensuring ~~[the safety and fitness of]~~ vehicles traveling on the roads of Texas are in compliance with the vehicle emissions requirements of the emissions inspection program, the State Implementation Plan, and the commercial vehicle inspection program. The State Implementation Plan is available at the following website: <https://www.tceq.texas.gov/airquality/sip/>. Vehicle inspection stations and vehicle inspectors have access to vehicle owners' personal information and have constant access to and are responsible for the lawful disposition of government records [documents]. For these reasons, the department has determined that the offenses contained within this section relate directly to the duties and responsibilities of vehicle inspection stations and vehicle inspectors certified under

Texas Transportation Code, Chapter 548. The types of offenses listed in this section are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and any such offenses regardless of the code in which they appear that relate to vehicle inspections or the operation of vehicle inspection stations.

(b) The offenses listed in paragraphs (1) - (8) ~~[(9)]~~ of this subsection are intended to provide guidance only~~[-]~~ and are not exhaustive of either the types of offenses that may relate to vehicle inspections or the operation of a vehicle inspection station or those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The disqualifying offenses also include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of a disqualifying offense under the laws of this state. Such offenses also include the "aggravated" or otherwise heightened versions of the offenses listed in paragraphs (1) - (8) ~~[(9)]~~ of this subsection. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in vehicle inspections or the operation of a vehicle inspection station, the department may find that a conviction not described in this section also renders a person unfit to hold a certificate as a vehicle inspector or vehicle inspection station owner. In particular, an offense that is committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or an offense that is facilitated by licensure as an owner or inspector, will be considered related to the occupation and will render the person unfit to hold the certification.

(1) Arson, Criminal Mischief, and Other Property Damage or Destruction (Texas Penal Code, Chapter 28).

(2) Robbery (Texas Penal Code, Chapter 29).

(3) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30).

(4) Theft (Texas Penal Code, Chapter 31).

(5) Fraud (Texas Penal Code, Chapter 32).

(6) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36).

(7) Perjury and Other Falsification (Texas Penal Code, Chapter 37).

(8) Criminal Homicide (Texas Penal Code, Chapter 19).

~~{(9) Driving Related Intoxication Offenses (Texas Penal Code, Chapter 49).}~~

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector~~[-]~~ or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, ~~[Article 42.12 §3g or Article 42A.054,~~ is permanently disqualifying.

(d) A Class A misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for five years from the date of conviction.

(e) A Class B misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection

stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for two years from the date of conviction.

(f) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a vehicle inspection station certificate holder or vehicle inspector:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
- (6) letters of recommendation;
- (7) evidence the applicant has:
  - (A) maintained a record of steady employment;
  - (B) supported the applicant's dependents;
  - (C) maintained a record of good conduct; and
  - (D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and
- (8) any other evidence relevant to the person's fitness for the certification sought.

(g) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

#### §23.6. *Training.*

- (a) When attending a department training course, the applicant must:
- (1) provide a department approved government issued photo identification;
  - (2) not be under the influence of drugs or alcohol;
  - (3) cooperate with the classroom rules as provided by department personnel;
  - (4) maintain good order and discipline during the training course; and
  - (5) successfully pass the written examination.

(b) Conduct which is disruptive or unsafe shall be grounds for immediate ejection from the training course and may result in the termination of the application process.

(c) The applicant for a ~~[vehicle inspection station certification or]~~ vehicle inspector certification will be given three (3) opportunities to pass the written exam. Failure to pass the exam within 30 days of the date of training will terminate the application process.

(d) Once a completed application for a renewal of a ~~[vehicle inspection station or]~~ vehicle inspector certification is received by the department, the applicant may be required to receive training and take a test prior to recertification.

(e) Each certified vehicle inspector must qualify, by training and examination provided by the department, for one or more of the endorsements listed in paragraphs (1) or (2) ~~[paragraphs (1) - (3)]~~ of this subsection which indicate the type of vehicle inspection reports the inspector is certified to issue and the types of vehicle inspections the inspector is qualified to perform.

~~[(1) S. May inspect any vehicle requiring a safety only vehicle inspection report, i.e., one-year, two-year, trailer, and motorcycle.]~~

(1) ~~[(2)]~~ C. May inspect any vehicle requiring a commercial inspection report~~[: i.e., commercial motor vehicle and commercial trailer].~~

(2) ~~[(3)]~~ E. May inspect any vehicle requiring an emissions ~~inspection report [test report, i.e., one-year safety/emissions and one-year emissions only (unique emissions test only inspection report)].~~

(f) The department representative may, if the vehicle inspector's performance warrants, require the vehicle inspector to take and pass all or a portion of the written test~~[:]~~ or require attendance at a vehicle inspection training program. Failure to pass a required test~~[:]~~ or refusal to comply with the department representative's request under this section~~[:]~~ may result in suspension of the vehicle inspector's certificate. The suspension will remain in effect until the inspector passes the required test or complies with the department representative's request, whichever is applicable.

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 October 11, 2024.

TRD-202404824

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



## SUBCHAPTER B. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

### 37 TAC §§23.11 - 23.13

The Texas Department of Public Safety (the department) proposes amendments to §§23.11 - 23.13, concerning General Vehicle Inspection Station Requirements. The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including adding a web link for the DPS Training and Operations Manual, removing references to non-commercial vehicles inspections, and specifying applicability to commercial vehicles.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government.

Ms. Whittenton has also determined that the proposed amendments may result in an adverse economic effect on small

businesses and micro-businesses, but there will be no adverse economic effect on rural communities. The estimated number of inspection stations licensed to perform non-commercial safety inspections is 10,951. It is estimated that 219 of these inspection stations are small businesses and 10,732 are micro-businesses. Therefore, there are an estimated 10,951 small or micro-businesses that may be adversely economically impacted by these proposed amendments implementing House Bill 3297, which eliminates the safety inspection program for personal (non-commercial) vehicles.

The estimated economic impact from the loss of revenue from safety inspections for a small or micro-business will be an average of approximately \$8,509 per year. This is based on the total number of 13,311,043 safety inspections conducted last year, multiplied by \$7.00 (the safety inspection fee), divided by the total number of all stations licensed to conduct safety inspections (10,951). There are no alternative methods that the department may consider in mitigating these effects under a regulatory flexibility analysis because these proposed amendments are required by legislation and involve the removal of provisions that will otherwise be null and void on January 1, 2025.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be the implementation of legislation and greater clarity and transparency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does eliminate a government program; it will eliminate current employee positions; it will not require an increase or decrease in future legislative appropriations to the agency; and it will decrease fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does limit an existing regulation. The proposed rulemaking does decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.252, which authorizes the Department of Public Safety to adopt rules relating to the issuance and content of vehicle inspection reports; §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission; §548.403, which authorizes the Department of Public Safety to adopt rules for the certification of inspection stations; and §548.407(e), which authorize the Public Safety Commission to adopt rules to implement §548.407.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.201, §548.252, §548.301, §548.303, §548.304, §548.403, §548.405, and §548.407 are affected by this proposal.

*§23.11. General Vehicle Inspection Station Requirements.*

(a) To be certified as a vehicle inspection station, the station's facilities must meet the standards listed in paragraphs (1) - (7) [(8)] of this subsection:

- (1) be of a permanent type;
- (2) have a permanent roof;
- (3) have a minimum of two permanent walls constructed of substantial material such as steel, masonry, or wood that is effective at protecting the building and equipment from the elements;
- (4) have a hard surfaced floor;
- (5) have an entrance to the approved inspection area of sufficient size to allow entry of any vehicle the station is endorsed to inspect (other than oversized vehicles as provided in subsection (c) [(d)] of this section);
- (6) have a display area located in the customer waiting area approved by the department. Only official notices, licenses, letters from the department, procedure charts, or other documents authorized by the department may be exhibited in the display area; and  
[(7) have a secured area for storage of records and necessary supplies; and]
- (7) [(8)] have a designated customer waiting area protected from the elements.

(b) To be certified as a vehicle inspection station, the designated space approved for inspection purposes must meet the standards detailed in this subsection:

- (1) be an area of at least 12 feet wide by 24 feet long and made of a hard surface such as asphalt or concrete[ (unless subject to subsection (e) of this section)];
- (2) be clear of obstacles and debris that would interfere with the safe operation of a vehicle and inspection of required items;
- (3) have lighting sufficient to afford good visibility for performing all inspection procedures; and
- (4) be contained entirely within a building and protected from the elements.

[(e) The inspection area for a motorcycle only station must be at least 8 feet wide by 10 feet long, level and hard surfaced.]

(c) [(d)] A vehicle inspection station may have an additional area approved by the department for the inspection of oversized ve-

hicles[, such as motor homes and trailers]. This area may be located outside the building.

§23.12. *Standards of Conduct.*

(a) The DPS Training and Operations Manual for official vehicle inspection stations and certified vehicle inspectors must be the instruction and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed. The DPS Training and Operations Manual (Revised January 2025) is adopted by reference and available at the following website: <https://www.dps.texas.gov/internetforms/getForm.ashx?id=VI-87.pdf>. [All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department provided device at the time of that inspection.]

(b) All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department approved device at the time of the inspection. [The DPS Training and Operations Manual for official vehicle inspection stations and certified vehicle inspectors must be the instruction and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed.]

(c) Fleet and government vehicle inspection stations must not inspect vehicles owned by officers, employees, or the general public.

(d) A vehicle inspection station must have a certified and properly endorsed vehicle inspector on duty to perform inspections [in a prompt manner] during posted inspection [business] hours.

(e) No vehicle inspection station shall refuse to inspect a vehicle for which it is endorsed that is presented for inspection during the posted inspection [business] hours without an objective justifiable cause related to safety.

(f) A certified vehicle inspector must conduct a complete and thorough inspection of every vehicle presented for an official inspection in accordance with this chapter and Texas Transportation Code, Chapter 548 [(the Act)], as authorized by the vehicle inspector's certification and by the vehicle inspection station's endorsement.

(g) A certified vehicle inspector must not use, nor be under the influence of, alcohol or drugs while on duty. Prescription drugs may be used when prescribed by a licensed physician, provided the inspector is not impaired while on duty.

(h) A certified vehicle inspector must inspect a vehicle presented for inspection within a reasonable time.

[(i) A certified vehicle inspector must notify the department representative supervising the vehicle inspection station immediately if his driver license is suspended or revoked.]

(i) [(j)] A certified vehicle inspector must conduct each inspection in the approved inspection area of the vehicle inspection station location designated on the certificate of appointment. The road test may be conducted outside this area.

(j) [(k)] The certified vehicle inspector must consult the vehicle owner or operator prior to making a repair or adjustment.

(k) [(l)] Inspections may be performed by more than one certified vehicle inspector, but the inspector of record is responsible for ensuring the inspection is completed in accordance with Texas Transportation Code, Chapter 548 [the Act] and this chapter.

(l) [(m)] The certified vehicle inspector must not require a vehicle owner whose vehicle has been rejected to have repairs made at a specific garage.

(m) [(n)] The certified vehicle inspector must maintain a clean and orderly appearance and be courteous in his contact with the public.

(n) [(o)] Any services offered in conjunction with the vehicle inspection must be separately described and itemized on the invoice or receipt.

(o) [(p)] At the conclusion of the inspection, the vehicle inspector must issue a signed vehicle inspection report to the owner or operator of the vehicle indicating whether the vehicle passed or failed.

(p) [(q)] If the vehicle inspection report shows the vehicle being inspected to be subject to a safety recall, where reasonably practical, the inspector shall advise the vehicle owner or operator that the vehicle is subject to a recall and that further details can be obtained from the dealer or manufacturer. The vehicle inspection station owner may delegate this responsibility to another employee of the station, but the station owner is responsible for ensuring compliance with this section.

(q) An inspection customer's vehicle may not be driven outside of the inspection bay by an inspector who does not have a currently valid driver license to operate the vehicle in Texas.

§23.13. *Equipment Requirements for Commercial Safety [All Classes of Vehicle] Inspection Stations.*

(a) All testing equipment must be approved by the department. All testing equipment must be installed and used in accordance with the manufacturer's and department's instructions. Equipment must be arranged and located at or near the approved inspection area and readily available for use.

(b) When equipment adjustments and calibrations are needed, the manufacturer's specifications and department's instructions must be followed. Defective equipment must not be used, and the vehicle inspector or station must cease performing inspections until such equipment is replaced, recalibrated, or repaired and returned to an operational status.

(c) To be certified as a vehicle inspection station, the station is required to possess and maintain, at a minimum, the equipment listed in paragraphs (1) - (6) [(7)] of this subsection:

(1) a measured and marked brake test area which has been approved by the department[, or an approved brake testing device;

(2) a measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches, and 80 inches to measure reflector height, clearance lamps, side marker lamps, and turn signal lamps on all vehicles[, with the exception that the 80 inch measuring device requirement does not apply to motoreyele-only vehicle inspection stations];

(3) a gauge for measuring tire tread depth;

(4) a measuring device for checking brake pedal reserve clearance[- This requirement does not apply to vehicle inspection stations with only a motoreyele endorsement];

(5) a department approved device for measuring the light transmission of suncreening [devices]. This requirement does not apply to government inspection stations[, or fleet inspection stations that have provided the department biennial written certification that the station has no vehicles equipped with [ a ] suncreening [ device. This requirement does not apply to vehicle inspection stations with only a motoreyele and/or trailer endorsement]; and

(6) a department approved device with required adapters for checking fuel cap pressure. The department requires vehicle inspection stations to obtain updated adapters as they become available from the manufacturer. A vehicle inspection station may not inspect a vehicle for which it does not have an approved adapter for that vehicle. This device is not required of government inspection stations or fleet inspection stations which have provided the department biennial written certification that the station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This device is not required of ~~[motoreyele-only or trailer-only inspection stations and]~~ certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline.

(d) To be certified as a commercial safety ~~[non-emissions vehicle]~~ inspection station, the station must have:

(1) an approved and operational electronic station interface device;

(2) a printer and supplies necessary for printing a vehicle inspection report on 8 1/2 x 11 paper; and

(3) an ~~[a telephone line, or]~~ internet connection for the electronic station interface device to be used during vehicle inspections either dedicated solely for use with the electronic device~~[s]~~ or shared with other devices in a manner approved by the department.

(e) For vehicle emissions inspection station requirements, see Subchapter E of this chapter (relating to Vehicle Emissions Inspection and Maintenance 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 October 11, 2024.

TRD-202404825

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



## SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

### 37 TAC §23.21, §23.22

The Texas Department of Public Safety (the department) proposes amendments to §23.21 and §23.22, concerning Vehicle Inspection Station Operation. The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including adding that vehicle inspection stations must use the electronic station interface device to issue vehicle inspection reports and adding that a fine may be assessed if a vehicle inspector shares a unique identifier protocol with another.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect

there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be the implementation of legislation and greater clarity and transparency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.252, which authorizes the Department of Public Safety to adopt rules relating to the issuance and content of vehicle inspection reports; and §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.201, §548.202, §548.252, §548.301, §548.303, §548.304, §548.401, §548.402, §548.403, §548.404, §548.405, §548.407, and §548.410 are affected by this proposal.

§23.21. *Electronic Vehicle Inspection Station Interface Device Access.*

(a) All vehicle inspections [~~performed in emissions and non-emissions testing inspection stations~~] must be reported using an approved method or device at the time the inspection is conducted. Access to the system at certified vehicle inspection stations must be controlled using procedures, processes, and protocols as established by the department.

(b) The records maintained in the database are governmental records. Fraudulent use of the database may subject the person to criminal prosecution, as well as administrative action.

(c) Vehicle inspectors and all other authorized users are held accountable for the security and confidentiality of all assigned access processes including, but not limited to, passwords, protocols, or personal identification numbers (PIN) [~~tokens, or access/identification cards~~].

(d) Before each official vehicle inspection begins, the inspector must use a unique identifier protocol as established by the department that links the inspection record with the certified vehicle inspector performing the inspection. The inspector of record entering his unique identifier is responsible for the inspection of all required items of inspection, must enter all information into the electronic station interface device at the time of inspection, and must complete other documents as required.

(e) Vehicle inspectors may not give, share, lend, or divulge this unique identifier protocol[~~;~~] including, but not limited to[~~;~~] passwords, protocols, or personal identification numbers (PIN)[~~;~~ or access/identification cards] to another person. Failure to comply with this section may result in a fine, suspension, or revocation of the vehicle inspector's certification, as well as any appropriate criminal action or administrative disciplinary action.

(f) The department may require certified vehicle inspectors to acknowledge the department's policy for use and protection of access procedures.

§23.22. *Vehicle Inspection Reports.*

(a) The information required by this subsection must be accurately entered into the electronic station interface device: vehicle identification number, license plate information, vehicle year, vehicle make, vehicle model, and odometer reading.

(b) The vehicle inspection report:

(1) must indicate whether the vehicle passed or failed the inspection;

(2) must be printed and signed by the vehicle inspector who performed the inspection at the time of inspection; and

(3) must indicate the month and year of expiration of the inspection.

(c) If the electronic station interface device is not operational, the station shall not perform inspections and the station must promptly notify the department.

(d) Vehicle inspection stations must use the electronic station interface device and department approved procedures to issue vehicle inspection reports.

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 October 11, 2024.

TRD-202404826

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



**37 TAC §23.26**

The Texas Department of Public Safety (the department) proposes the repeal of §23.26, concerning Retention of Records. This repeal is necessary because vehicle inspection reports and out of state identification certificates are now submitted electronically by the licensees, therefore retention of physical records is no longer required.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the implementation of legislation and greater simplicity and efficiency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does repeal an existing regulation. The

proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.201, §548.301, §548.303, and §548.304 are affected by this proposal.

#### §23.26. Retention of Records.

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 October 11, 2024.

TRD-202404827

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



## SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

### 37 TAC §23.41

The Texas Department of Public Safety (the department) proposes the repeal of §23.41, concerning Passenger (Non-Commercial) Vehicle Inspection Items. The rule is being repealed in response to House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government.

Ms. Whittenton has also determined that the proposed amendments may result in an adverse economic effect on small businesses and micro-businesses, but there will be no adverse economic effect on rural communities. The estimated number of inspection stations licensed to perform non-commercial safety inspections is 10,951. It is estimated that 219 of these inspection stations are small businesses and 10,732 are micro-businesses. Therefore, there are an estimated 10,951

small or micro-businesses that may be adversely economically impacted by these proposed amendments implementing House Bill 3297, which eliminates the safety inspection program for personal (non-commercial) vehicles.

The estimated economic impact from the loss of revenue from safety inspections for a small or micro-business will be an average of approximately \$8,509 per year. This is based on the total number of 13,311,043 safety inspections conducted last year, multiplied by \$7.00 (the safety inspection fee), divided by the total number of all stations licensed to conduct safety inspections (10,951). There are no alternative methods that the department may consider in mitigating these effects under a regulatory flexibility analysis because these proposed amendments are required by legislation and involve the removal of provisions that will otherwise be null and void on January 1, 2025.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the implementation of legislation and greater simplicity and efficiency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does eliminate a government program; it will eliminate current employee positions; it will not require an increase or decrease in future legislative appropriations to the agency; and it will decrease fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does repeal an existing regulation. The proposed rulemaking does decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.403, §548.405, and §548.407 are affected by this proposal.

§23.41. *Passenger (Non-Commercial) Vehicle Inspection Items.*

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 October 11, 2024.

TRD-202404829

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



**37 TAC §23.42**

The Texas Department of Public Safety (the department) proposes amendments to §23.42, concerning Commercial Vehicle Inspection Items. The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including moving and adding language from current §23.41 (to be repealed) relating to the inspection of vehicles equipped with compressed natural gas fuel systems and adding a web link for the DPS Training and Operations Manual.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be the implementation of legislation and greater simplicity and efficiency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and §548.252, which authorizes the Department of Public Safety to adopt rules relating to the issuance and content of vehicle inspection reports.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.201, and §548.252 are affected by this proposal.

§23.42. *Commercial Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section must be inspected in accordance with the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations Manual prior to the issuance of a passing vehicle inspection report.

(b) All items must be inspected in accordance with [the attached] inspection procedures found in [the figure in this section reflects excerpts from] the DPS Training and Operations Manual, Chapter 6 (Revised January 2025), which is adopted by reference and available at the following website: <https://www.dps.texas.gov/inter-netforms/getForm.aspx?id=VI-87.pdf>.  
[Figure: 37 TAC §23.42(b)]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) of this section may be confirmed by any appropriate combination of the items detailed in paragraphs (1) - (3) of this subsection:



(1) Observation of Container Label. The vehicle inspector may confirm the requirement of subsection (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) of this section are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either requirements of subsection (c)(1) or (c)(2) of this section are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61 (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals).

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 October 11, 2024.

TRD-202404828

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



## SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM 37 TAC §§23.51 - 23.53

The Texas Department of Public Safety (the department) proposes amendments to §§23.51 - 23.53, concerning Vehicle Emissions Inspection and Maintenance Program. The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including removing references related

to personal vehicle safety inspections, specifying applicability to commercial vehicles, and adding a web link for the State Implementation Plan.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government.

Ms. Whittenton has also determined that the proposed amendments may result in an adverse economic effect on small businesses and micro-businesses, but there will be no adverse economic effect on rural communities. The estimated number of inspection stations licensed to perform non-commercial safety inspections is 10,951. It is estimated that 219 of these inspection stations are small businesses and 10,732 are micro-businesses. Therefore, there are an estimated 10,951 small or micro-businesses that may be adversely economically impacted by these proposed amendments implementing House Bill 3297, which eliminates the safety inspection program for personal (non-commercial) vehicles.

The estimated economic impact from the loss of revenue from safety inspections for a small or micro-business will be an average of approximately \$8,509 per year. This is based on the total number of 13,311,043 safety inspections conducted last year, multiplied by \$7.00 (the safety inspection fee), divided by the total number of all stations licensed to conduct safety inspections (10,951). There are no alternative methods that the department may consider in mitigating these effects under a regulatory flexibility analysis because these proposed amendments are required by legislation and involve the removal of provisions that will otherwise be null and void on January 1, 2025.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be the implementation of legislation and greater simplicity and efficiency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does eliminate a government program; it will eliminate current employee positions; it will not require an increase or decrease in future legislative appropriations to the agency; and it will decrease fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does limit an existing regulation. The proposed rulemaking does decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.201, §548.301, §548.3012, §548.302, §548.303, and §548.304 are affected by this proposal.

*§23.51. Vehicle Emissions Inspection Requirements.*

(a) In affected counties, to be certified by the department as a vehicle inspection station, the station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department to only inspect [as stations endorsed only to issue inspection reports for one or more of the listed categories of vehicles: trailer, motoreycle,] commercial motor vehicles [vehicle, or commercial trailer].

(b) A commercial vehicle inspection station in a county not designated as an affected county shall not inspect a designated vehicle [unless the vehicle inspection station is certified by the department to perform emissions testing, or] unless the motorist represents that [presenting the vehicle signs an affidavit as prescribed by the department stating] the vehicle is exempted from emissions testing. Under the exceptions outlined in paragraphs (1) - (3) of this subsection, a commercial vehicle registered in an affected county may receive a commercial safety inspection at a vehicle inspection station in a non-affected county.

(1) The vehicle is not a designated vehicle because it has not and will not be primarily operated in an affected county. This exception includes the subparagraphs (A) and (B) of this paragraph:

(A) Company fleet vehicles owned by business entities registered at a central office located in an affected county but operated from branch offices and locations in non-affected counties on a permanent basis.

(B) Hunting and recreational vehicles registered to the owner in an affected area[,] but permanently maintained on a hunting property or vacation home site in a non-affected county.

(2) The vehicle no longer qualifies as a designated vehicle because it no longer and will be no longer primarily operated in an affected county. For example, the vehicle registration indicates it is registered in an affected county, but the owner has moved, does not currently reside in, nor will primarily operate the vehicle in an affected county.

(3) The vehicle is registered in an affected county and is primarily operated in a non-affected county[,] but will not return to an affected county prior to the expiration of the current registration. Under this exception the vehicle will be reinspected at a vehicle inspection station certified to do vehicle emissions testing immediately upon return to an affected county. Examples of this exception include vehicles

operated by students enrolled at learning institutions, vehicles operated by persons during extended vacations, or vehicles operated by persons on extended out-of-county business.

(c) All designated vehicles must be emissions tested at the time of and, if applicable, as a part of the designated vehicle's annual commercial vehicle safety inspection at a vehicle inspection station certified by the department to perform vehicle emissions testing. The exceptions outlined in paragraphs (1) and (2) of this subsection apply to this provision.

(1) Commercial motor vehicles, as defined by Texas Transportation Code, §548.001, meeting the description of "designated vehicle" provided in this section, [Designated commercial motor vehicles] must be emissions tested at a vehicle inspection station certified by the department to perform vehicle emissions testing and must be issued an emissions test only inspection report, as authorized by Texas Transportation Code, §548.252 prior to receiving a commercial motor vehicle safety inspection report pursuant to Texas Transportation Code, Chapter 548. The emissions test only inspection report must be issued within 15 calendar days prior to the issuance of the commercial motor vehicle safety inspection report and will expire at the same time the newly issued commercial motor vehicle safety inspection report expires.

(2) Vehicles presented for inspection by motorists in counties not designated as affected counties meeting other exceptions listed in this section.

(d) A commercial motor vehicle with a currently valid safety inspection report presented for an "Emissions Test on Resale" inspection shall receive an emissions test. The owner or selling dealer may choose one of two options:

(1) a complete commercial safety and emissions test and receipt of a new inspection report; or

(2) an emissions test and receipt of the emissions test only inspection report. The emissions test only inspection report will expire at the same time as the current safety inspection report.

(e) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old up to and including 24 years old, presented for the annual commercial vehicle safety inspection in affected counties will be presumed to be a designated commercial vehicle and will be emissions tested as a part of the annual vehicle safety inspection.

(f) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days.

(g) Federal and state governmental or quasi-governmental agency vehicles that are primarily operated in affected counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions inspection and maintenance (I/M) requirements contained in the Texas I/M State Implementation Plan (SIP), which is available at the following website: <https://www.tceq.texas.gov/airquality/sip/>.

(h) Any motorist in an affected county whose designated vehicle has been issued an emissions related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested at the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(i) Inspection reports previously issued in a newly affected county shall be valid and remain in effect until the expiration date thereof.

~~[(j) An emissions test only inspection report expires at the same time the vehicle's registration expires.]~~

~~[(k)]~~ (j) The department may perform quarterly equipment and/or gas audits on all vehicle emissions analyzers used to perform vehicle emissions tests. If a vehicle emissions analyzer fails the calibration process during the gas audit, the department may cause the appropriate vehicle inspection station to cease vehicle emissions testing with the failing emissions analyzer until all necessary corrections are made and the vehicle emissions analyzer passes the calibration process.

~~[(l)]~~ (k) Pursuant to the Texas I/M SIP, the department may administer and monitor a follow up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in Code of Federal Regulations, Title 40, §51.353(c)(3).

~~[(m)]~~ (l) Vehicle owners receiving a notice from the department requiring an emissions [emission] test shall receive an out-of-cycle test[,] if the vehicle already has a valid safety and emissions [emission] inspection report. This test will be conducted in accordance with the terms of the department's notice. The results of this verification emissions inspection shall be reported (online) to the Texas Information Management System Vehicle Identification Database. Vehicles identified to be tested by the notice will receive the prescribed test regardless of the county of registration and regardless of whether the vehicle has a valid [safety inspection report or a valid safety and] emissions inspection report. [If the vehicle has a valid safety inspection report or a valid safety and emissions inspection report, the owner may choose one of two options:]

~~[(1) a complete safety and emissions test and receipt of a new inspection report; or]~~

~~[(2) The emissions test only inspection report will expire at the same time as the current safety inspection report.]~~

~~[(n) Pursuant to Texas Education Code, §51.207, public institutions of higher education located in affected counties may require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out of state.]~~

~~[(1) Vehicles presented under this subsection shall receive an emissions inspection and be issued a unique emissions test only inspection report.]~~

~~[(A) For vehicles registered in this state from counties without an emissions testing program, the emissions test only inspection report will expire at the same time as the vehicle's current safety inspection report.]~~

~~[(B) For vehicles registered in another state, the emissions test only inspection report will expire on the twelfth month after the month indicated on the date of the vehicle inspection report generated by the emissions inspection. Under no circumstances is the vehicle inspection station authorized to remove an out-of-state inspection and/or registration certificate, including safety, emissions, or a combination of any of the aforementioned.]~~

~~[(2) The vehicle inspector shall notify the operator of a vehicle presented for an emissions inspection under this subsection of the requirement to retain the vehicle inspection report as proof of emissions testing under Texas Education Code, §51.207.]~~

### §23.52. Emissions Testing Waiver.

(a) The department may issue an emissions testing waiver to any vehicle that [passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and] meets the established criteria for a particular waiver. An emissions testing waiver defers the need for full compliance with vehicle emissions standards of the vehicle emissions inspection and maintenance (I/M) program for a specified period of time after a vehicle fails an emissions test. The motorist may apply once each testing cycle for the waiver.

(b) Qualified emissions related repairs are those repairs to emissions control components, including diagnosis, parts, and labor, which count toward a low mileage waiver or individual vehicle waiver. To be considered qualified emissions related repairs, the repairs:

(1) must be directly applicable to the cause for the emissions test failure;

(2) must be performed after the initial emissions test or [have been performed] within 60 days prior to the initial emissions test;

(3) must not be tampering related repairs;

(4) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(5) must be performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas to include the labor cost and/or diagnostic costs. If repairs are not performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas, only the purchase price of parts applicable to the emissions test failure qualify as a repair expenditure for the low mileage waiver or individual vehicle waiver.

(c) Low mileage waiver.

(1) A vehicle may be eligible for a low mileage waiver provided it:

(A) has failed both its initial emissions inspection and retest;

(B) has incurred qualified emissions-related repairs, as defined in paragraph (2) of this subsection, costing \$100 or more;

(C) has been driven less than 5,000 miles in the previous inspection cycle; and

(D) is reasonably expected to be driven fewer than 5,000 miles before the next inspection is required.

(2) The requirements listed in subparagraphs (A) - (C) of this paragraph must be met to receive a low mileage waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the claimed emissions repairs have been performed [the emissions repairs claimed have actually been performed].

(C) The valid retest vehicle inspection report and valid vehicle repair form for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the low mileage waiver amount, the vehicle repair form shall be completed by a recognized emissions repair technician of Texas.

(d) Individual vehicle waiver.

(1) If a vehicle has failed an emissions test required by the vehicle emissions I/M program, an applicant may petition the designated representative of the department for an individual vehicle waiver in order for the vehicle to receive a state vehicle inspection report. The applicant must demonstrate that all reasonable measures, such as diagnostics, repairs, or installation of replacement parts, have been implemented, but have failed to bring the vehicle into compliance with the program. The department will review the measures taken by the applicant to ensure they have been performed, further measures would be economically unfeasible during this inspection cycle, and a waiver will result in a minimal impact on air quality. A vehicle may be eligible for an individual vehicle waiver provided:

(A) it [H] failed both the initial emissions inspection and retest; and[-]

(B) the [The] motorist has incurred qualified emissions related repairs[-] equal to or in excess of the maximum reasonable repair expenditure amounts, as defined in this section, for the county in which the vehicle is registered.

(2) The applicable maximum reasonable repair expenditure amounts are:

(A) in affected counties, except El Paso county--\$600; and

(B) in El Paso county--\$450.

(3) The individual vehicle waiver shall be valid through the end of the twelfth month from the date of issuance. Motorists must apply for the individual vehicle waiver each testing cycle.

(4) The conditions listed in subparagraphs (A) - (C) of this paragraph must be met to receive an individual vehicle waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs being claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs being claimed have been performed.

(C) The valid retest vehicle inspection report and valid vehicle repair form for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the individual vehicle waiver, the vehicle repair form shall be completed by a recognized emissions repair technician of Texas.

#### §23.53. *Time Extensions.*

(a) ~~The department may issue a time extension [to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular time extension]. A time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions inspection and maintenance (I/M) program for a specified period of time after a vehicle fails an emissions test. The motorist may apply once each testing cycle for the parts availability time extension. The motorist may apply every other testing cycle for the low income time extension.~~

(b) Low income time extension.

(1) The applicant must provide proof in writing, in a form approved by the department, that:

(A) The vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed vehicle inspection report.

(B) The vehicle has not been granted a low income time extension in the previous testing cycle.

(C) The applicant is the owner of the vehicle that is the subject of the low income time extension.

(D) The applicant receives financial assistance from the Texas Health and Human Services Commission or the Texas Department of Aging and Disability Services due to indigence or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation approved by the department that the applicant certifies as true and correct.

(2) After a vehicle receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension.

(c) Parts availability time extension.

(1) The applicant must demonstrate to the department that:

(A) Reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers.

(B) Emissions related repairs cannot be completed before the expiration of the registration[-] or before the 30 day period following an out of cycle inspection because the repairs require an uncommon part.

(2) The applicant shall provide to the department:

(A) an original vehicle inspection report indicating the vehicle failed the emissions test; and

(B) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address, and phone number of parts distributor; and expected delivery and installation date(s). The original itemized document must be prepared by a recognized emissions repair technician of Texas before a parts availability time extension can be issued.

(3) A parts availability time extension is not allowed for tampering related repairs.

(4) If the vehicle does not pass an emissions retest prior to the expiration of the parts availability time extension, the applicant must provide to the department adequate documentation that one of the conditions listed in subparagraph (A) or (B) of this paragraph exists:

(A) the motorist qualifies for a low mileage waiver, low income time extension, or individual vehicle waiver; or

(B) the motor vehicle will no longer be operated in the affected county.

(5) A vehicle that receives a parts availability time extension in one testing cycle must have the vehicle repaired and retested prior to the expiration of such extension[-] or must qualify for another type of waiver or time extension to be eligible for a parts availability time extension in the subsequent testing cycle.

(6) The length of a parts availability time extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts availability time extensions will be issued for either 30, 60, or 90 days.

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 October 11, 2024.

TRD-202404830

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



## SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

### 37 TAC §23.62, §23.63

The Texas Department of Public Safety (the department) proposes amendments to §23.62 and §23.63, concerning Violations and Administrative Penalties. The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules or provide conformity with other amendments, including updating the violations and penalty schedule, adding certain violations, and clarifying the role of settlement conferences.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be the implementation of legislation and greater simplicity and efficiency in the regulation of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed

rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission; and §548.407(e), which authorizes the Public Safety Commission to adopt rules to implement §548.407.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, §548.003, §548.201, §548.301, §548.303, §548.304 §548.403, §548.405, and §548.407 are affected by this proposal.

#### §23.62. *Violations and Penalty Schedule.*

(a) In accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) The department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 [~~the Act~~], or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.

Figure: 37 TAC §23.62(b)

[Figure: 37 TAC §23.62(b)]

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting an item [one or more items] of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, or emissions analyzer access/identification card, and/or any assigned access processes including, but not limited to, passwords, protocols, or personal identification numbers (PINs) number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours posted of operations for inspections the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart, and other notices in a manner prescribed by the department.

(I) Failure to post hours for inspections of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a passing vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection or and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by Texas Transportation Code, Chapter 548 the Act, this chapter, or department regulation.

(S) Driving an inspection customer's vehicle outside of the inspection bay without a valid driver license to operate the vehicle in Texas.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee, or service charge in affiliation or connection with the inspection<sub>;</sub> in a manner that is false, misleading, deceptive, or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report<sub>;</sub> while employed as a fleet or government inspection station inspector<sub>;</sub> to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased, or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station, or personal vehicles of or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete, or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending, or displaying to another any assigned access process including, but not limited to, passwords, protocols, an emissions analyzer access/identification card, the electronic station interface device unique identifiers identifier, or PINs divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection<sub>;</sub> including, but not limited, to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report, or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, Chapter 548 §548.104(d).

(T) Vehicle inspection station owner, operator, or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or Texas Transportation Code, Chapter 548 the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or Texas Transportation Code, Chapter 548 the Act.

(V) Issuing a commercial safety only inspection report to a vehicle required to undergo an a safety and emissions inspection without requiring a representation under §23.51(b) of this title (relating to Vehicle Emissions Inspection Requirements) signed and legible affidavit, approved by the department, from the owner or operator of the vehicle<sub>;</sub> in a non-emissions non emissions county.

(W) Disclosing or selling information collected in relation to a vehicle inspection about a unique customer or a unique vehicle owner[; to a person other than the department] or about the person who is the subject of the information, including a customer or vehicle owner's name, address, or phone number, to a person other than the department.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle, or using an electronic device to simulate or emulate a vehicle, for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning), or allowing a certified inspector or other individual under the person's employment or supervision to emissions test the exhaust or electronic connector of one vehicle, or use an electronic device that simulates or emulates a vehicle, for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report, or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to Texas Transportation Code, Chapter 548 [the Aet] or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device[;] or failing to transmit complete and accurate data in the manner required by the department.

(M) Violating a prohibition described in §23.57 of this title (relating to Prohibitions) not otherwise provided in this section.

(N) Failing to maintain compliance with the requirements of §23.55 of this title (relating to Certified Emissions Inspection Station and Inspector Requirements) at all times.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to pay an administrative penalty that has become final [~~possess a valid driver license~~].

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emissions [~~emission~~] testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test[;] or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections, or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections, or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted, or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or Texas Transportation Code, Chapter 548 [the Aet].

(G) Tampering with the emissions system or an emissions [~~emission~~] related component in order to cause a vehicle to fail an emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report.

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(4) The penalty schedule is a guide only and does not limit the department's authority to impose additional penalties, sanctions, or both, should the department determine the scheduled penalty insuffi-

cient under the specific circumstances presented. Such circumstances may include a significant number of similar violations in a brief period, a pattern of conduct established by repeated as yet unadjudicated violations, or a violation determined to constitute a threat to public health, safety, or welfare under Texas Transportation Code, §548.407.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked[;] or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation, or pending action[;] has no[; ~~nor will have any,~~] further involvement in the business of state inspections. The application will be rejected as incomplete if the applicant fails to submit the required affidavit.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation[;] has no[; ~~nor will have any,~~] further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station. The application will be rejected as incomplete if the applicant fails to submit the required affidavit.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. In addition, to meet all qualifications for the certificate, the certificate holder must:

- (1) attend and complete the vehicle inspection training program and pass the complete written and demonstration test;
- (2) submit the certification fee if certification has expired during suspension; and
- (3) pay all charges assessed related to the administrative hearing process, if applicable.

(h) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

(i) The director or the director's designee may immediately suspend or revoke a certificate as an inspector or inspection station if the director or the director's designee finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare as described in Texas Transportation Code, §548.407(d)(1-10). Specifically, this section's emissions-related inspection violations are adopted pursuant to Texas Transportation Code, §548.302, and therefore constitute a threat to public health, safety, or welfare under §548.407(d)(8) [~~of the Act~~].

(j) For purposes of establishing a violation relating to the entry of false information or the failure to enter accurate information into the electronic database, the entry of an inspector's identifying PIN creates a rebuttable presumption that the inspector whose PIN was used com-

mitted the violation. The allegation may be rebutted by the submission of credible evidence establishing by a preponderance of evidence that another person used the inspector's PIN to commit the violation. The submission of such evidence will constitute an admission of having failed to secure the PIN and, if applicable, allowing an uncertified individual to conduct an inspection.

§23.63. *Informal Hearings; Settlement Conference.*

(a) A person who receives notice of the department's intention to deny an application for an inspector certificate, to suspend or revoke an inspector certificate, or to impose an administrative penalty under §23.62 of this title (relating to Violations and Penalty Schedule), may appeal the decision by submitting a request to appeal by mail, facsimile, or electronic mail[;] to the department in the manner provided on the department's Vehicle Inspection Program website within thirty (30) calendar days after receipt of notice of the department's proposed action. If a written request to appeal is not submitted within thirty (30) calendar days of the date notice was received, the right to an informal hearing or settlement conference, as applicable, or a hearing before the State Office of Administrative Hearings, is waived, and the action becomes final.

(b) If the action is based on the person's criminal history, a preliminary, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the proposed action[;] or issue a written statement of findings to the respondent either upholding or modifying the original proposed action.

(c) If the proposed action is based on an administrative violation, the failure to satisfy a requirement under §23.1(i) of this title (relating to New or Renewal Vehicle Inspection Station Applications), or a non-criminal history disqualifier, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone[;] by agreement of the parties. Following the settlement conference, the parties will execute an agreed order[;] or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings following a preliminary hearing, or its determination following a settlement conference, may be appealed to the State Office of Administrative Hearings by submitting a request by mail, facsimile, or electronic mail[;] to the department in the manner provided on the department's Vehicle Inspection Program website[;] within thirty (30) calendar days after receipt of the findings or determination. If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

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 October 11, 2024.

TRD-202404831

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 424-5848



◆   ◆   ◆

## SUBCHAPTER G. VEHICLE INSPECTION ADVISORY COMMITTEE

### 37 TAC §§23.71 - 23.73

The Texas Department of Public Safety (the department) proposes amendments to §§23.71 - 23.73, concerning Vehicle Inspection Advisory Committee. The amendments clarify and update the rules relating to the Vehicle Inspection Advisory Committee, including that department staff will make a record of attendance for each meeting and that the alternating acting presiding officer will prepare the agenda for the meeting over which the officer will be presiding.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be clarification of certain procedures relating to the Vehicle Inspection Advisory Committee.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-

0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 and §548.006 are affected by this proposal.

#### *§23.71. Purpose and Duties of Vehicle Inspection Advisory Committee.*

The purpose of the advisory committee shall be to give the department's [Vehicle Inspection Service] employees the benefit of the members' collective business, environmental, and technical expertise and experience with respect to the department's rules relating to the operation of the vehicle inspection program and make recommendations relating to the content of rules involving the operation of the vehicle inspection program. Recommendations and advice of the committee are not binding on the department. The committee will have no supervision or control over public business or policy. The advisory committee's sole duty is to advise the department on the state's vehicle inspection program. This advice shall consist of review and comment on rules considered for adoption under Texas Transportation Code, Chapter 548 and Texas Health and Safety Code, Chapter 382. The Vehicle Inspection Advisory Committee has no executive or administrative powers or duties with respect to the operation of the department, and all such powers and duties rest solely with the department. Any other specific purposes and tasks of the advisory committee shall be identified by the director.

#### *§23.72. Attendance.*

A record of attendance at each meeting of the advisory committee shall be made by department staff. Except as otherwise provided by law, if a member of the advisory committee misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period, that member automatically vacates his or her position on the advisory committee.

#### *§23.73. Presiding Officer.*

The members appointed by the presiding officers of the Public Safety Commission and the Conservation Commission shall alternately serve as the presiding officer of the committee, alternating between each meeting or as the members decide. The acting presiding officer will prepare a meeting agenda for the [each] meeting of the advisory committee over which the officer will be presiding. A copy of the agenda shall be provided to the department fifteen (15) working days before any scheduled meeting so that the department can arrange for the necessary staff to be in attendance and provide notification to the committee members and the public. The presiding officer shall report the committee's advice and attendance to the director. The committee may elect an assistant presiding officer and a secretary from among its members and may adopt rules for the conduct of its own activities.

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 October 11, 2024.

TRD-202404832

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

**CHAPTER 106. DIVISION FOR BLIND SERVICES**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 106 in Texas Administrative Code Title 40, Part 2, concerning Division for Blind Services. The chapter consists of §§106.201, concerning, Purpose; 106.203, concerning Legal Authority; 106.205, concerning Definitions; 106.307, concerning Application; 106.309, concerning Eligibility; 106.311, concerning Prohibited Factors; 106.313, concerning Eligibility Determination Time Frame; 106.315, concerning Determination of Ineligibility; 106.317, concerning Case Closure; 106.407, concerning Provision of Services; 106.409, concerning Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs; 106.411, concerning Physical and Mental Restoration Services; 106.413, concerning Vocational and Other Training Services; 106.415, concerning Maintenance; 106.417, concerning Transportation; 106.419, concerning Services to Family Members; 106.421, concerning Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and Tactile Interpreting for Consumers Who Are Deafblind; 106.423, concerning Reader Services and Rehabilitation Teaching Services; 106.425, concerning Employment Assistance; 106.427, concerning Post-Employment Services; 106.429, concerning Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies; 106.431, concerning Assistive Technology Devices; 106.433, concerning Individualized Plan for Employment (IPE); §106.501, concerning Purpose of Consumer Participation; 106.507, concerning Scope of Consumer Participation; 106.509, concerning Refusal to Disclose Economic Resources; 106.607, concerning Comparable Services and Benefits; 106.707, concerning Application of an Order of Selection; 106.801, concerning Purpose; 106.803, concerning Legal Authority; 106.805, concerning Definitions; 106.807, concerning Eligibility; and 106.809, concerning Certificate of Blindness for Tuition Waiver.

**BACKGROUND AND PURPOSE**

Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015, transferred the functions of the Department of Assistive and Rehabilitative Services (DARS) to HHSC. S.B. 208, 84th Legislature, Regular Session, 2015, transferred the Vocational Rehabilitation (VR) Program from DARS to the Texas Workforce Commission (TWC). HHSC is repealing the rules in 40 TAC Chapter 106, Division for Blind Services, because HHSC no longer oversees that program. The Texas Workforce Commission has adopted rules for the VR Program in Title 40, Part 20, Chapter 856, so there will be no disruption to the VR Program or to Texans receiving services.

**SECTION-BY-SECTION SUMMARY**

The proposed repeal of 40 TAC Chapter 106, concerning Division for Blind Services, deletes rules that are no longer necessary.

**FISCAL NOTE**

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

**GOVERNMENT GROWTH IMPACT STATEMENT**

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed.

**LOCAL EMPLOYMENT IMPACT**

The proposed repeals will not affect a local economy.

**COSTS TO REGULATED PERSONS**

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

**PUBLIC BENEFIT AND COSTS**

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

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

**TAKINGS IMPACT ASSESSMENT**

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 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 24R079" in the subject line.

SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM  
DIVISION 1. PROGRAM AND SUBCHAPTER PURPOSE

**40 TAC §§106.201, 106.203, 106.205**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

- §106.201. *Purpose.*
- §106.203. *Legal Authority.*
- §106.205. *Definitions.*

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

Filed with the Office of the Secretary of State on October 10, 2024.

TRD-202404810  
Karen Ray  
Chief Counsel  
Department of Assistive and Rehabilitative Services  
Earliest possible date of adoption: November 24, 2024  
For further information, please call: (512) 840-8536



DIVISION 2. ELIGIBILITY

**40 TAC §§106.307, 106.309, 106.311, 106.313, 106.315, 106.317**

STATUTORY AUTHORITY

The repeals are 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 Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

- §106.307. *Application.*
- §106.309. *Eligibility.*
- §106.311. *Prohibited Factors.*
- §106.313. *Eligibility Determination Time Frame.*
- §106.315. *Determination of Ineligibility.*
- §106.317. *Case Closure.*

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 October 10, 2024.

TRD-202404811  
Karen Ray  
Chief Counsel  
Department of Assistive and Rehabilitative Services  
Earliest possible date of adoption: November 24, 2024  
For further information, please call: (512) 840-8536



DIVISION 3. PROVISION OF VOCATIONAL REHABILITATION SERVICES

**40 TAC §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417, 106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431, 106.433**

STATUTORY AUTHORITY

The repeals are 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 Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

- §106.407. *Provision of Services.*
- §106.409. *Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs.*
- §106.411. *Physical and Mental Restoration Services.*
- §106.413. *Vocational and Other Training Services.*
- §106.415. *Maintenance.*
- §106.417. *Transportation.*
- §106.419. *Services to Family Members.*
- §106.421. *Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and Tactile Interpreting for Consumers Who Are Deafblind.*
- §106.423. *Reader Services and Rehabilitation Teaching Services.*
- §106.425. *Employment Assistance.*
- §106.427. *Post-Employment Services.*

§106.429. *Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies.*

§106.431. *Assistive Technology Devices.*

§106.433. *Individualized Plan for Employment (IPE).*

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 October 10, 2024.

TRD-202404812

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 840-8536



## DIVISION 4. CONSUMER PARTICIPATION

### 40 TAC §§106.501, 106.507, 106.509

#### STATUTORY AUTHORITY

The repeals are 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 Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

§106.501. *Purpose of Consumer Participation.*

§106.507. *Scope of Consumer Participation.*

§106.509. *Refusal to Disclose Economic Resources.*

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 October 10, 2024.

TRD-202404813

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 840-8536



## DIVISION 5. COMPARABLE BENEFITS

### 40 TAC §106.607

#### STATUTORY AUTHORITY

The repeal 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 Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeal implements Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

§106.607. *Comparable Services and Benefits.*

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 October 10, 2024.

TRD-202404814

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 840-8536



## DIVISION 6. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

### 40 TAC §106.707

#### STATUTORY AUTHORITY

The repeal is 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 Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeal implements Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

§106.707. *Application of an Order of Selection.*

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 October 10, 2024.

TRD-202404815

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 840-8536



## DIVISION 7. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER

### 40 TAC §§106.801, 106.803, 106.805, 106.807, 106.809

#### STATUTORY AUTHORITY

The repeal 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 Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary for DARS to administer human services programs to persons who are blind, deaf, or hard of hearing.

The repeal implements Texas Government Code §531.0055 and Texas Human Resources Code §117.073.

§106.801. *Purpose.*

§106.803. *Legal Authority.*

§106.805. *Definitions.*

§106.807. *Eligibility.*

§106.809. *Certificate of Blindness for Tuition Waiver.*

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 October 10, 2024.

TRD-202404816

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 24, 2024

For further information, please call: (512) 840-8536

