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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §§40.2, 40.3, 40.5, 40.9, 40.11, 40.13, 40.15

The Texas Ethics Commission (the TEC) proposes amendments to Texas Ethics Commission Rules in Chapter 40 regarding Financial Disclosure for Public Officers.

Specifically, the TEC proposes amendments to rules §40.2 regarding Disclosure of Financial Activity and §40.11 regarding Publicly Traded Corporation as Source of Income. The TEC also proposes new rules §40.3 regarding PFS Required for Each Year of Service, §40.5 regarding Assets and Liabilities of Business Associations, §40.9 regarding Exchange Traded Funds and Real Estate Investment Trusts, §40.13 regarding Beneficial Interest in Real Property Includes Real Property Held in a Trust, and §40.15 regarding Identification of the Source of Rents Derived From Rental Property.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.* The TEC is authorized to adopt rules to administer Chapter 572 of the Government Code. Tex. Gov't Code §§ 571.061, .062.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding financial disclosures, which are codified in Chapter 40. The adoption of amendments to some rules and new rules seek to clarify the rules related to filers submitting personal financial statements.

The rules and amendments are designed to more closely track statutory language and to provide more clarity and notice of the TEC's interpretations of the statutory requirements of Chapter 572 of the Government Code.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended and new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended and new rules. The public will benefit from clear rules that should result in uniform and complete disclosures of information required by Chapter 572 of the Government Code. The state officers required to make the disclosure will similarly benefit from clear rules related to the personal financial statement. The proposed rules do not impose a burden beyond the statutory requirements in Chapter 572.

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

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

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

The amended and new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 572 of the Government Code.

The proposed amended and new rules affect Chapter 572 of the Government Code.

§40.2. Disclosure of Financial Activity.

For purposes of §572.023 of the Government Code, a filer's personal financial statement must include:

(1) the filer's financial activity in which the filer held an ownership interest, including but not limited to community property; and

(2) the financial activity of the filer's spouse and dependent children if the filer exercised [~~or held the right to exercise~~] any degree of [~~legal or~~] factual control over the activity, notwithstanding a partition agreement.

§40.3. PFS Required for Each Year of Service.

(a) A state officer who serves for any portion of a calendar year must file a PFS the following year covering financial activity that occurred during the portion of the year the state officer held office.

(b) A member of the legislature who retires at the end of the member's term in January is not required to file a PFS covering the calendar year of service in which member retires.

(c) Comments:

(1) For example, under subsection 40.3(a) of this section, if a state officer ceases to be a state officer in October 2024, the state officer is required to file a PFS in by the deadline provided by §572.026(a) of the Government Code in calendar year 2025, covering financial activity that occurred through October 2024, provided the state officer does not holdover.

(2) Under subsection 40.3(b) of this section, a member of the legislature who retires at the end of the member's term in January 2025 is required to file a PFS in 2025 covering calendar year 2024. The member is not required to file a PFS in calendar year 2026 covering calendar year 2025 by virtue of service from January 1 to January 6 of 2025, before the member's successor is sworn into office.

§40.5. Assets and Liabilities of Business Associations.

Assets and liabilities of business associations that must be reported under §572.023(b)(9) of the Government Code shall be reported as though they are the assets and liabilities of the individual filer.

§40.9. Exchange Traded Funds and Real Estate Investment Trusts.

Ownership interests in exchange-traded funds and real estate investment trusts shall be reported under §572.023(b)(2) of the Government Code as though they were shares of stock.

§40.11. Publicly Traded Corporation as Source of Income [~~over $500~~].

For purposes of §572.023(b)(4), Government Code, a publicly traded corporation is identified as a source of income by disclosing its full name in addition to the category of the amount of income.

§40.13. Beneficial Interest in Real Property Includes Real Property Held in a Trust.

(a) Except as provided in subsection (b), a filer must disclose real property held in a trust for the benefit of the filer as a beneficial interest in real property under §572.023(b)(6) of the Government Code.

(b) A filer is not required to disclose real property held in a blind trust that complies with §572.023(c) of the Government Code only if the filer does not have actual knowledge of the property held in a trust for the filer's benefit.

§40.15. Identification of the Source of Rents Derived from Rental Property.

An identification of the source of rents derived from a rental property must include the name of the lessee and the address of the rental property.

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 17, 2024.

TRD-202404901

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

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CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (TEC) proposes amendments to 1 Texas Administrative Code, Chapter 50, §50.1, regarding the Legislative Per Diem. The existing rule and the proposed amendments implements the Constitutional requirement that the TEC set the legislative per diem rate. Tex. Const. art. III, §§ 24(a), 24a(e).

The Texas Constitution requires the TEC to set the per diem to which members of the legislature and the lieutenant governor are entitled for each day during each regular and special session of the Legislature. *Id.* The per diem rate shall reflect "reasonable estimates of costs" and may be raised or lowered biennially, but "may not exceed during a calendar year the amount allowed as of January 1 of that year for federal income tax purposes as a deduction for living expenses incurred in a legislative day by a state legislator in connection with the legislator's business as a legislator." *Id*.

Under the Internal Revenue Code, a state legislator may deduct the greater of the federal employees' per diem (the "GSA rate") or the legislator's state per diem, as long as the state legislator's per diem does not exceed 110 percent of the GSA rate. 26 U.S.C. § 162(h)(1)(B). Therefore, the Texas Constitution allows the TEC to set the per diem rate at no more than 110 percent of the GSA rate.

The GSA rate is made up of the lodging rate, and meals and incidental expenses rate prescribed by the GSA and published exclusively on its website. The GSA rate for Austin as of January 1, 2025, is $267 (of which $187 is lodging and $80 is meals and incidental expenses).

The rule as amended would set the per diem for members of the legislature and the lieutenant governor at $267 for each day during the regular session and any special session. The proposed rule amendment sets the per diem equal to the GSA rate as a reasonable estimate of costs associated with the legislature attending the legislative session in Austin.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the proposed rule. The fiscal implication for the state over the first five years will be an increase of $3,516,240 over the current per diem rate. The fiscal impact calculation assumes there will be three legislative session in the next five years. The impact may increase if one or more special legislative sessions are called.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit from the members of the legislature receiving a per diem in compliance with the Texas Constitution that reflects a reasonable estimate of cost for their attendance in Austin for legislative sessions, outweighs the cost. There will not be an

effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

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

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

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

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects amendment affects the Texas Constitution, Article III, §24; Article III, §24a; and Article IV, §17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is $267 [~~$221~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the $267 [~~$221~~] per diem for 2025 [~~2019~~].

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 17, 2024.

TRD-202404900
Jim Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-5800

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

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

BACKGROUND AND PURPOSE

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

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

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

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

The proposed new §351.849 updates the agency name from DADS to HHSC, per S.B. 200, 84th Legislature, Regular Session, 2015; extends the abolishment to March 1, 2028, and revises the rule in several places to ensure the rule conforms with HHSC's advisory committee rules standards.

The proposed rule language for both sections updates certain citations to the Texas Government Code as modified by House Bill (H.B.) 4611, 88th Legislature, Regular Session, 2023. HB 4611 made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. The updated citations will become effective on April 1, 2025.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §351.847 deletes the rule as currently written.

New §351.847: (1) updates the rule language and organization by aligning it with HHSC's advisory committee rule standards; (2) replaces "DADS" with "HHSC" throughout the rule; (3) adds subsections regarding required training and travel reimbursement; and (4) updates the date of abolishment in subsection (j) from March 1, 2026, to March 1, 2032.

The proposed repeal of §351.849 deletes the rule as currently written.

New §351.849: (1) updates the rule language and organization by aligning it with HHSC's advisory committee rule standards; (2) replaces "DADS" with "HHSC" throughout the rule; (3) adds subsections regarding required training and travel reimbursement; (3) decreases the committee membership from "no more than 24 members" to "15 members;" and (4) updates the date of abolishment in subsection (j) from March 1, 2026, to March 1, 2028.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals and new rules will be in effect, enforcing or administering the repeals and new rules 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 and new rules will be in effect:

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

(2) implementation of the proposed repeals and new rules will not affect the number of HHSC employee positions;

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

(4) the proposed repeals and new rules will not affect fees paid to HHSC;

(5) the proposed repeals and new rules will create new regulations;

(6) the proposed repeals and new rules will repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed new rules apply only to HHSC.

LOCAL EMPLOYMENT IMPACT

The proposed repeals and new rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals and new rules are in effect, the public benefit will be that the ATWAC and TRAC continue to advise HHS agencies on key aging initiatives and development of strategies to reduce barriers to accessing respite services and improvement of quality of respite services.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 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 24R022" in the subject line.

1 TAC §351.847, §351.849

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

The repeals affect Texas Government Code §531.0055, Chapter 2110, Texas Government Code §523.0201 and Texas Human Resources Code §161.079.

§351.847. Aging Texas Well Advisory Committee.

§351.849. Texas Respite Advisory Committee.

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

Filed with the Office of the Secretary of State on October 21, 2024.

TRD-202404919
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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1 TAC §351.847, §351.849

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees, Texas Human Resources Code §161.079, relating to informal caregiver services, and The Lifespan Respite Care Act, 42 United States Code §300ii.

The new sections affect Texas Government Code §531.0055, Chapter 2110, Texas Government Code §523.0201 and Texas Human Resources Code §161.079.

§351.847. Aging Texas Well Advisory Committee.

(a) Statutory Authority. Aging Texas Well Advisory Committee (ATWAC) is established under Executive Order R.P. 42 and by the Texas Health and Human Services Commission (HHSC) executive commissioner in accordance with Texas Government Code §523.0201. The committee is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The committee advises the executive commissioner and HHSC on aging topics and issues and makes recommendations to HHSC and state leadership consistent with Executive Order R.P. 42.

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

(1) identifies and discusses aging policy issues;

(2) assesses state government readiness to address issues facing older Texans;

(3) promotes increased local community preparedness for aging Texans;

(4) assists HHSC by providing recommendations on aging issues and the Aging Texas Well Plan; and

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

(d) Reporting requirements. By August 31 of each year, the committee files an annual written report with the executive commissioner covering the meetings and activities in the immediately preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

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

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

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

(6) recommended amendments to this section; and

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

(e) Meetings.

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

(2) Frequency. The ATWAC will meet quarterly.

(3) Quorum. A majority of all members constitutes a quorum for the purpose of transacting official business.

(f) Membership.

(1) The committee is composed of up to 18 members appointed by the executive commissioner. In selecting members to serve on the committee, HHSC considers the applicants' qualifications, background, and interest in serving.

(A) Eleven voting members representing the following categories.

(i) One member representing Area Agencies on Aging.

(ii) One member representing Aging and Disability Resource Centers.

(iii) Nine members representing any of the following:

(I) the academic community;

(II) advocates for older adults, including family or caregivers;

(III) older adults;

(IV) faith-based organizations;

(V) non-profit organizations;

(VI) the aging service-delivery network;

(VII) providers from an adult residential setting;

(VIII) providers from a community setting;

(IX) providers serving persons with disabilities; and

(X) providers of community services.

(B) Up to seven non-voting, ex officio members representing the following.

(i) Texas Department of State Health Services.

(ii) Texas Department of Family and Protective Services.

(iii) Texas Department of Housing and Community Affairs.

(iv) Texas Workforce Commission.

(v) Texas Department of Public Safety.

(vi) Texas Department of Transportation.

(vii) Higher Education Coordinating Board.

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

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

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

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

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

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

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

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

(i) Travel Reimbursement. Unless permitted by the current General Appropriations Act, members of the committee are not paid to participate in the committee nor reimbursed for travel to and from meetings.

(j) Date of abolition. The committee is abolished and this section expires on March 1, 2032.

§351.849. Texas Respite Advisory Committee.

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

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

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

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

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

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

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

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

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

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

(1) a list of the meeting dates;

(2) the members' attendance records;

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

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

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

(6) recommended amendments to this section; and

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

(e) Meetings.

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

(2) Frequency. The TRAC will meet quarterly.

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

(f) Membership.

(1) The committee is composed of 15 members appointed by the executive commissioner. In selecting members to serve on the committee, HHSC considers the applicants' qualifications, background, and interest in serving. HHSC tries to choose committee members who represent the diversity of all Texans, including ethnicity, gender, and geographic location. Fifteen voting members representing the following categories:

(A) family caregivers;

(B) primary caregivers;

(C) providers of respite services;

(D) faith-based organizations;

(E) espite care advocacy organizations; and

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

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 21, 2024.

TRD-202404920
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.507

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs, and §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to clarify the reimbursement methodologies for the long-term services and supports (LTSS) state plan and waiver services delivered through managed care. HHSC maintains fee schedules for LTSS programs and services delivered in STAR+PLUS or STAR Kids programs that represent the rates HHSC would pay contracted providers for these services if the services were delivered under a fee-for-service delivery model. The proposed amendments ensure that HHSC has an established rate methodology for all the services delivered in managed care based on the STAR+PLUS and STAR Kids LTSS billing matrices. The proposal relabels and adds language to the rules to reference the STAR+PLUS and STAR Kids managed care programs and removes references to the expired Community-Based Alternatives Waiver Program and Integrated Care Management-Home and Community Support Services Program. The proposal also consolidates rate methodologies for LTSS state plan services delivered through STAR+PLUS and STAR Kids into the applicable Texas Administrative Code rule. The proposal revises the rate methodology for out-of-home respite under STAR Kids Medically Dependent Children Program (MDCP) to mirror proposed waiver changes and the published billing matrix. Finally, the proposal adds language to the rules to distinguish in-home and out-of-home settings for home health care services, including nursing, occupational therapy, and physical therapy, to ensure compliance with the 21st Century Cures Act, which requires all states to implement the use of electronic visit verification (EVV).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.503 changes the title to "Reimbursement Methodology for Long-Term Services and Supports State Plan and Home and Community-Based Services Waiver Program Services Delivered through the STAR+PLUS Managed Care Program." Language is revised to remove references to expired programs and add references to STAR+PLUS LTSS State Plan and STAR+PLUS Home and Community-Based Services (HCBS) services, as well as to distinguish between Community First Choice (CFC) and non-CFC services. Language is added to differentiate between in-home and out-of-home nursing services, physical therapy, and occupational therapy. "Assisted Living/Residential Care (AL/RC)" is changed to "assisted living (AL) services" to accurately reflect services offered under STAR+PLUS. Other edits are made to correct or clarify language, correct numbering, and formatting.

Section 355.503 subsection (a) is revised to specify that the rule establishes the fee-for-service (FFS) equivalent rate methodology for services delivered through STAR+PLUS. New subsection (b) is added to describe rate methodologies for STAR+PLUS LTSS state plan services. Subsection (c)(1) is revised to remove language about total allowable costs that is no longer relevant, clarify what is included in the administration and facility cost area, and add language specific to the CFC Personal Attendant Services (PAS) and habilitation reimbursement methodology. Subsection (c)(2) is revised to remove language about updates to federal supplemental security income that is no longer relevant. Subsection (e) is revised to remove language about the number of cost reports to be submitted based on rate enhancement program participation that is no longer relevant.

The proposed amendment to §355.507 changes the title to "Reimbursement Methodology for Long-Term Services and Supports State Plan and Medically Dependent Children Waiver Program Services Delivered through the STAR Kids and STAR Health Managed Care Programs." Language is revised to add references to STAR Kids and STAR Health, distinguish between CFC and non-CFC services, and update service names for in-home respite and flexible family supports. Other edits are made to correct or clarify language, correct numbering, and formatting.

Section 355.507 subsection (a) is revised to specify that the rule establishes the FFS rate methodology for services delivered through STAR Kids and STAR Health managed care. Sub-

section (b) is added to describe rate methodologies for STAR Kids and STAR Health LTSS state plan services. New subsection (c) is added to specify reimbursement rate determination for MDCP services delivered through STAR Kids and STAR Health, update references to nursing facility (NF) reimbursement setting methodology rules and add rate determination for transition assistance services. New subsection (d) adds language clarifying that HHSC does not currently require providers contracted with managed care organizations to submit cost reports.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be appropriate FFS-equivalent reimbursement methodologies for services provided through STAR+PLUS, STAR Kids, and STAR Health managed care and alignment with billing matrices.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any requirements on regulated persons.

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 HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@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 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 24R068" 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.503. Reimbursement Methodology for Long-Term Services and Supports State Plan and Home and Community-Based Services Waiver Program Services Delivered through the STAR+PLUS Managed Care Program [~~the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs~~].

(a) General requirements. The Texas Health and Human Services Commission (HHSC) establishes the rate methodology for long-term services and supports (LTSS) state plan and Home and Community-Based Services (HCBS) waiver program services delivered through STAR+PLUS managed care.

(1) HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(2) For HCBS waiver program services, providers [~~Providers~~] are reimbursed for [~~waiver~~] services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, providers are reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver

participants. The pre-enrollment assessment covers care planning for the participant.

(3) [~~(b)~~] [~~Other sources of cost information.~~] If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys,[~~;~~] cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services,[~~;~~] and other sources.

(b) State plan services reimbursement determination. For LTSS state plan services delivered through STAR+PLUS, Community First Choice (CFC) personal assistance services (PAS) and habilitation services are calculated as specified in §355.9090 of this title (relating to Reimbursement Methodology for Community First Choice); non-CFC PAS is calculated as specified in §355.5902 of this title (relating to Reimbursement Methodology for Primary Home Care); day activity and health services (DAHS) are calculated as specified in §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services); emergency response services (ERS) are calculated as specified in §355.510 of this subchapter (relating to Reimbursement Methodology for Emergency Response Services (ERS)); financial management services agency (FMSA) fees are calculated as specified in §355.114 of this title (relating to Consumer Directed Services Payment Option.

(c) STAR+PLUS HCBS Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.[~~:~~]

(1) Unit of service reimbursement. Reimbursement for non-CFC PAS [~~personal assistance services~~] and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, supported employment, employment assistance, and day activity and health services (DAHS) is [~~will be~~] determined [~~on a fee-for-service basis~~] in the following manner.[~~:~~]

(A) Total allowable costs for each provider are [~~will be~~] determined by analyzing the allowable historical costs reported on the cost report.

[~~(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.~~]

(B) [~~(C)~~] Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(C) [~~(D)~~] Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(D) [~~(E)~~] Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(E) [~~(F)~~] For in-home and out-of-home nursing services provided by an RN, in-home and out-of-home nursing services provided by an LVN, in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech/language therapy, supported employment, employment assistance, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service[~~;~~] for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(F) [~~(G)~~] For non-CFC PAS [~~personal assistance services~~], two cost areas are created.[~~:~~]

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) The administration and facility [~~Another attendant~~] cost area [~~is created which~~] includes field supervisors' salaries and wages, benefits, and mileage reimbursement expenses; building, building equipment, and operation and maintenance costs; administration costs; and other service costs. [~~the other personal attendant services costs not included in clause (i) of this subparagraph as determined in subparagraphs (A) - (E) of this paragraph.~~] An allowable cost per unit of service is determined for each contracted provider cost report for the administration and facility [~~other attendant~~] cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and [~~is~~] multiplied by 1.044.

(iii) The attendant cost area and the administration and facility [~~other attendant~~] cost area are summed to determine the PAS [~~personal assistance services~~] cost per unit of service.

(G) CFC PAS and habilitation services are calculated as specified in §355.9090 of this title (relating to Reimbursement Methodology for Community First Choice).

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care in an AFC home is [~~will be~~] determined as a per day reimbursement using a method based on modeled projected expenses, which are developed using data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income (SSI), less a personal needs allowance.

(B) The reimbursement for assisted living (AL) services is [~~Assisted Living/Residential Care (AL/RC) will be~~] determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(E)(iii) of this subchapter [~~title~~] (relating to Reimbursement Methodology for Residential Care).

(i) The per day reimbursement for attendant care for each of the [~~six~~] levels of care is [~~will be~~] determined based on [~~upon~~] client need for attendant care.

(ii) A total reimbursement amount is [~~will be~~] calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments.

(iii) The room and board payment is paid to the provider by the client from the client's SSI [~~Supplemental Security Income (SSI)~~], less a personal needs allowance.

(iv) The reimbursement for out-of-home respite in an AL [~~AL/RC~~] facility is determined using the same methodology as the reimbursement for AL [~~AL/RC~~] except that the out-of-home respite rates:

(I) are set at the rate for providers who choose not to participate in the attendant compensation rate enhancement; and

(II) include room and board costs equal to the client's SSI, less a personal needs allowance.

~~[(v) When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC and out-of-home respite provided in an AL/RC facility will be adjusted in amounts equal to the increase or decrease in SSI received by clients.]~~

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility is [~~will be~~] based on the amount determined for the Nursing Facility case mix class into which the [~~CBA~~] participant is classified.

(D) The reimbursement for Personal Care 3 is [~~will be~~] composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center is [~~will be~~] determined by modeling the cost of the minimum required staffing for the Personal Care 3 setting, as specified by HHSC [~~the Department of Aging and Disability Services~~], and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center is [~~will be~~] equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care 3 rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-ons [~~add-on's~~] to the Personal Care 3 rates.

(3) ERS [~~Emergency Response Services~~]. The reimbursement for ERS is [~~Emergency Response Services will be~~] determined as a monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Emergency Response Services (ERS)).

(4) Requisition fees. Requisition fees are reimbursements paid to [~~the CBA~~] home and community support services contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for [~~CBA~~] participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, and minor home modifications. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys,[~~;~~] cost report data from similar programs,[~~;~~] consultation with other service providers and/or professionals experienced in delivering contracted services,[~~;~~] and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys,[~~;~~] cost report data from other similar programs,[~~;~~] consultation with other service providers and/or professionals experienced in delivering contracted services,[~~;~~] and other sources.

(6) Home-Delivered Meals. The reimbursement for Home-Delivered Meals is [~~will be~~] determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Home-Delivered Meals).

(7) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any LTSS program or service delivered through STAR+PLUS [~~waiver service in this program~~], providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title.

~~[(3) Number of cost reports to be submitted.]~~

~~[(A) Contracted providers participating in the attendant compensation rate enhancement.]~~

~~[(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.]~~

~~[(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.]~~

~~[(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.]~~

~~[(C) Contractors participating and not participating in attendant compensation rate enhancement.]~~

~~[(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:]~~

~~[(I) one cost report for the contracts that do not participate; and]~~

~~[(II) one cost report for the contracts that do participate.]~~

[(ii) ~~At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:~~]

[(I) ~~one cost report for the contracts that do not participate; and~~]

[(II) ~~one cost report for each level of enhancement.~~]

(3) [~~(4)~~] Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information that [~~which~~] are necessary for the provision of services[~~,~~] and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported,[~~;~~] or

(ii) an auditor determines that reported costs are not verifiable.

(4) [~~(5)~~] Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(b)(20)(K) of this title.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.507. Reimbursement Methodology for Long-Term Services and Supports State Plan and [~~the~~] Medically Dependent Children Waiver Program Services Delivered through the STAR Kids and STAR Health Managed Care Programs.

(a) General Requirements. The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of long-term services and supports (LTSS) state plan and [~~services in the~~] Medically Dependent Children Waiver Program (MDCP) services delivered through the STAR Kids and STAR Heath managed care programs. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) State plan services reimbursement determination. For LTSS state plan services delivered through STAR Kids and STAR Health, adult day care services are calculated as specified in §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services); personal care services, nurse delegation and supervision services, and private duty nursing are calculated as specified in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services); Community First Choice (CFC) attendant and habilitation and personal assistance services (PAS) are calculated as specified in §355.9090 of this title (relating to Reimbursement Methodology for Community First Choice); emergency response services are calculated as specified in §355.510 of this subchapter (relating to Reimbursement Methodology for Emergency Response Services (ERS)); prescribed pediatric extended care services are calculated as specified in §355.9080 of this title (relating to Reimbursement Methodology for Prescribed Pediatric Extended Care Centers); financial management services agency (FMSA) fees are calculated as specified in §355.114 of this title (relating to Consumer Directed Services Payment Option).

(c) MDCP reimbursement determination. Recommended payment rates are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Recommended payment rates for MDCP services are determined as follows.

(1) [~~(b)~~] The rates for in-home respite and flexible family supports nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) are [~~will be~~] determined in accordance with §355.502 of this subchapter [~~title~~] (relating [~~Relating~~] to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(2) [~~(c)~~] The rates for in-home respite and flexible family supports provided by an attendant [~~personal assistance services (PAS)~~] without delegation of the service by an RN are [~~will be~~] based on [~~upon~~] the STAR+PLUS Home and Community-Based Services (HCBS) waiver rate methodology [~~Community-Based Alternatives (CBA) approved rates~~] for PAS in accordance with §355.503 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Long-Term Services and Supports State Plan and Home and Community-Based Services Waiver Program Services Delivered through the STAR+PLUS Managed Care Program) [~~the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs~~)] and §355.112(m) [~~§355.112(l)~~] of this title (relating to Attendant Compensation Rate Enhancement). The rates for in-home respite and flexible family supports provided by an attendant [~~PAS~~] with delegation of the service by an RN are [~~will be~~] based on [~~upon~~] the STAR+PLUS HCBS waiver rate methodology [~~Community-Based Alternatives (CBA) approved rates~~] for PAS in accordance with §355.503 of this subchapter [~~title~~] and the add-on payment for the

highest level of attendant compensation rate enhancement in accordance with §355.112(o) [~~§355.112(n)~~] of this title.

(3) [~~(d)~~] The rate ceiling for respite care. Camp setting [~~camp~~] services is [~~will be~~] equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service are [~~will be~~] the lesser of the rate ceiling or the actual cost of the camp.

(4) [~~(e)~~] Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility rate methodology in accordance with §355.307 of this title (relating to Reimbursement Setting Methodology before September 1, 2025). After September 1, 2025, the rates for facility-based respite care are calculated at 77 percent of the daily nursing facility rate methodology in accordance with §355.318 of this title (relating to Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025). [~~base rates by level of care~~]. The base rates used in this calculation do not include nursing facility rate add-ons.

(5) [~~(f)~~] The rates for supported employment and employment assistance are [~~will be~~] based on [~~upon~~] the rate methodology [~~CBA approved rates~~] for supported employment and employment assistance in accordance with §355.503 of this subchapter [~~title~~].

(6) Transition assistance services rates are determined in accordance with §355.502 of this subchapter.

(d) [~~(g)~~] Cost reports. If HHSC deems it appropriate to require providers contracted with managed care organizations to deliver LTSS services in STAR Kids and STAR Health to submit a cost report, the [~~The~~] following sections of this title will apply [~~to cost reports or surveys required to obtain the necessary information to determine new payment rates~~]: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

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 21, 2024.

TRD-202404916
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 867-7817

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CHAPTER 381. GUARDIANSHIP SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 381, comprising of Subchapter A, §381.1, concerning Purpose; and §381.2, concerning Definitions; Subchapter B, §§381.101, concerning Duties; 381.102, concerning Membership and Eligibility; and 381.103, concerning Officers and Meetings; Subchapter C, §§381.201, concerning Eligible Projects; 381.202, concerning Eligible Applicants; 381.203, Application and Selection Process; 381.204, concerning Grant Period; 381.205, concerning Continuation Funding Policy; 381.206, concerning Grant Amounts; 381.207, concerning Notification of Award; 381.208, concerning Request for Reconsideration; 381.209, concerning Contract; 381.210, concerning Progress Reports; Subchapter D, §§381.301, concerning Purpose; 381.303, concerning Applicability of Standards to Guardianship Programs; 381.305, concerning Ineligibility of Non-compliant Programs; 381.315, concerning Form of Entity; 381.317, concerning Fiscal Responsibility; 381.319, concerning Budget; 381.321, concerning Insurance; 381.323, concerning Fees for Services; 381.325, concerning Guardianship Bonds; 381.331, concerning Guardianship Accountability; 381.333, concerning Service Provider Employee Screening; 381.335, concerning Confidentiality; 381.337, concerning Supervision of Employees and Volunteers; 381.339, concerning Community Involvement; 381.345, concerning Less Restrictive Alternatives to Guardianship; 381.347, concerning Guardianship Program Service Levels, 381.349, concerning Role of Volunteers; 381.351, concerning Staffing Requirements; 381.353, concerning Training Requirements; 381.355, concerning Conflicts of Interest; 381.357, concerning Referral, Intake, and Assessments; 381.359, concerning Prioritization of Potential Clients on Waiting Lists; 381.361, concerning Responsibility for Burial or Cremation; 381.363, concerning Evaluation and Monitoring of Caseloads; 381.365, concerning Personal Care Plans for Guardianship Clients; and 381.367, concerning Financial Care Plans for Guardianship Clients.

BACKGROUND AND PURPOSE

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

SECTION-BY-SECTION SUMMARY

The proposed repeal of Chapter 381, concerning Guardianship Services, deletes the rules as they are no longer necessary. The statutory authority for the board was transferred to the Office of Court Administration by S.B. 966, 83rd Legislature, Regular Session, 2013.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

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

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal 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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be repealed.

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 the repeal is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

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 eliminating references to the Guardianship Advisory Board in the Texas Administrative Code because HHSC has not overseen the Guardianship Advisory Board since 2013.

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 24R022" in the subject line.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

1 TAC §381.1, §381.2

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.1. Purpose.

§381.2. Definitions.

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

Filed with the Office of the Secretary of State on October 21, 2024.

TRD-202404921
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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SUBCHAPTER B. GUARDIANSHIP ADVISORY BOARD

1 TAC §§381.101 - 381.103

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.101. Duties.

§381.102. Membership and Eligibility.

§381.103. Officers and Meetings.

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 21, 2024.

TRD-202404922
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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SUBCHAPTER C. GRANTS FOR LOCAL GUARDIANSHIP PROGRAMS

1 TAC §§381.201 - 381.210

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.201. Eligible Projects.
§381.202. Eligible Applicants.
§381.203. Application and Selection Process.
§381.204. Grant Period.
§381.205. Continuation Funding Policy.
§381.206. Grant Amounts.
§381.207. Notification of Award.
§381.208. Request for Reconsideration.
§381.209. Contract.
§381.210. Progress 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.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 840-8536

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SUBCHAPTER D. STANDARDS FOR GUARDIANSHIP PROGRAMS

DIVISION 1. GENERAL

1 TAC §§381.301, 381.303, 381.305

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.301. Purpose.
§381.303. Applicability of Standards to Guardianship Programs.
§381.305. Ineligibility of Non-compliant Programs.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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DIVISION 2. ADMINISTRATION AND FISCAL MANAGEMENT

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

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.315. Form of Entity.
§381.317. Fiscal Responsibility.
§381.319. Budget.
§381.321. Insurance.
§381.323. Fees for Services.
§381.325. Guardianship Bonds.

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 21, 2024.

TRD-202404926

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 840-8536

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DIVISION 3. PERSONNEL MANAGEMENT

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

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.331. Guardianship Accountability.

§381.333. Service Provider Employee Screening.

§381.335. Confidentiality.

§381.337. Supervision of Employees and Volunteers.

§381.339. Community Involvement.

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 21, 2024.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 840-8536

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DIVISION 4. GUARDIANSHIP PROGRAMS AND CLIENT SERVICES

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

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.345. Less Restrictive Alternatives to Guardianship.

§381.347. Guardianship Program Service Levels.

§381.349. Role of Volunteers.

§381.351. Staffing Requirements.

§381.353. Training Requirements.

§381.355. Conflicts of Interest.

§381.357. Referral, Intake, and Assessments.

§381.359. Prioritization of Potential Clients on Waiting Lists.

§381.361. Responsibility for Burial or Cremation.

§381.363. Evaluation and Monitoring of Caseloads.

§381.365. Personal Care Plans for Guardianship Clients.

§381.367. Financial Care Plans for Guardianship Clients.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 174. ECONOMIC DEVELOPMENT ADVISORY COMMITTEES

10 TAC §174.1, §174.2

The Office of the Governor, Texas Economic Development and Tourism Office ("Office") proposes new 10 TAC §174.1, §174.2, concerning Economic Development Advisory Committees.

EXPLANATION AND JUSTIFICATION OF THE RULES

The Office is authorized by section 481.0211, Texas Government Code, to establish by rule advisory committees to make recommendations to the Office on programs, rules, and policies administered by the Office. This rulemaking establishes provisions for the governance of all advisory committees created under this new chapter, as well as the specific purposes and composition of a new economic development advisory committee.

SECTION BY SECTION SUMMARY

Proposed rule §174.1 would establish provisions of general applicability to all advisory committees created under new chapter 174. The proposed rule sets forth the purpose of the chapter, duration of advisory committees, appointment authority, procedure for selection of chair of advisory committees, maximum number of members, term length, quorum requirements, qualifications,

conflict of interest standards, training requirements, and meeting attendance requirements. The proposed rule further sets forth the responsibilities of the Office with respect to advisory committees and that advisory committee members will serve without compensation and will not be reimbursed for expenses unless otherwise authorized by law.

Proposed rule §174.2 would create the International Business Advisory Committee and establishes the purposes, composition, and qualifications of the committee's members. The proposed rule would also establish how the Office will determine which countries are Countries of Interest for the development and promotion of business relationships between Texas and such countries.

FISCAL NOTE

Adriana Cruz, Executive Director of the Office, has determined that the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction of costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Ms. Cruz has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT

Ms. Cruz has determined for the first five-year period the proposed rules are in effect, the public benefit will be clarity and consistency in the creation of and operation of the Office's advisory committees, as well as a benefit to Texas in identifying countries with which the Office can enhance business and economic development relationships.

PROBABLE ECONOMIC COSTS

Ms. Cruz has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with the proposed rules.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES.

Ms. Cruz has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under §2006.002, Texas Government Code, is not required.

LOCAL EMPLOYMENT IMPACT STATEMENT

Ms. Cruz has determined the proposed rulemaking does not have an impact on local economy; therefore, no local employment impact statement under §2001.022, Texas Government Code, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed rules are in effect, the rules:

1) will not create or eliminate a government program;

2) will not require the creation of new employee positions or the elimination of existing employee positions;

3) will not require an increase or decrease in future legislative appropriations to the OOG;

4) will not require an increase or decrease in fees paid to the OOG;

5) will create new regulations;

6) will not expand certain existing regulations, limit certain existing regulations, or repeal existing regulations;

7) will increase the number of individuals subject to the applicability of the rules; and

8) will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Ms. Cruz has determined that there are no private real property interests affected by the proposed rules; therefore, the Office is not required to prepare a takings impact assessment pursuant to §2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Terry Zrubek, Office of the Governor, by email to *terry.zrubek@gov.texas.gov* with the subject line "Economic Development Advisory Committee Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on December 2, 2024, which is at least 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY

Section 481.0211, Texas Government Code, authorizes the Office to adopt rules relating to the establishment of advisory committees to make recommendations to the Office on programs, rules, and policies administered by the Office.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by the proposed rules.

§174.1. Establishment of Advisory Committees.

(a) This chapter governs the creation and operation of advisory committees, except as otherwise provided by law or rule in this chapter. The purpose of an advisory committee is to make recommendations to the Economic Development and Tourism Office in the Office of the Governor (Office) on programs, rules, and policies administered by the Office. An advisory committee's sole role is to advise the Office. An advisory committee has no executive or administrative powers or duties with respect to the operation of the Office.

(b) The Office shall establish advisory committees by rule in this chapter. An advisory committee is abolished on the fourth anniversary of the date of its creation unless the Office designates a different expiration date for an advisory committee, or an advisory committee has a specific duration prescribed by law.

(c) The Chief of Staff of the Office of the Governor or designee will appoint members to an advisory committee based on advice and input from the Executive Director and staff of the Office. The appointees serve at the pleasure of the Chief of Staff of the Office of the Governor.

(d) Each advisory committee will select from its members a chair to serve as a presiding officer, a vice-chair, and any other officers the members determine are necessary to achieve the purposes of the advisory committee.

(e) An advisory committee must be composed of a reasonable number of members not to exceed twenty-four members. A quorum of an advisory committee consists of a majority of the number of members fixed by rule in this chapter. An advisory committee may act only by majority vote of the members present and voting at the meeting.

(f) Advisory committee members:

(1) shall serve two-year staggered terms;

(2) must have knowledge about and interests in the specific purpose and tasks of an advisory committee established under this chapter;

(3) are subject to the conflict-of-interest provisions established under chapter 481, Texas Government Code;

(4) must complete training regarding the Open Meetings Act, chapter 551, Texas Government Code, and the Public Information Act, chapter 552, Texas Government Code; and

(5) automatically vacate the positions to which they were appointed if they miss three or more consecutive advisory committee meetings, and the Chief of Staff or designee will appoint a new member to fill the remainder of the unexpired term created by the vacancy.

(g) For each advisory committee established under this chapter, the Executive Director of the Office will designate a division of the Office that will be responsible for providing necessary administrative support essential to the functions of the advisory committee.

(h) Advisory committee meetings shall:

(1) relate to the business in an agenda and occur on the date, time, and place established by the division designated under subsection (g) of this section; and

(2) be held at least annually.

(i) For each advisory committee created under this chapter, the Office shall adopt rules that address the purpose and role of the advisory committee. The rules may address additional items, including membership qualifications, terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this chapter.

(j) Office staff shall maintain minutes of each advisory committee meeting and distribute copies of approved minutes and other advisory committee documents to advisory committee members.

(k) Office staff shall report an advisory committee's recommendations to the Executive Director or designee. The presiding officer of an advisory committee or designee may present the committee's recommendations to the Executive Director of the Office.

(l) Members of an advisory committee will serve without compensation and shall not be reimbursed for expenses unless reimbursement is authorized by law and approved by the Executive Director.

(m) The Office shall monitor the activities, work, usefulness, costs, Office staff time used to support, and composition of advisory committees.

§174.2. International Business Advisory Committee.

(a) The Texas International Business Advisory Committee (IBAC) is established to assist the Office with the international trade relations and economic development in specific countries to benefit the State of Texas. The IBAC shall assist the Office, provide information, referrals, and recommendations to the Office to spur foreign trade and foreign direct investment to the State.

(b) The IBAC shall be composed of no more than fifteen members, the presence of eight of whom constitutes a quorum. The Chief of Staff of the Office of the Governor will select IBAC members on basis of high-level business and government contact in a Country of Interest, business relationships in a Country of Interest, or specialized knowledge about or substantial experience with interacting with a Country of Interest.

(c) For purposes of subsection (b) of this section, the Office will identify Countries of Interest through trade statistics and foreign direct investment figures and will communicate the Countries of Interest to the Chief of Staff of the Office of the Governor and IBAC members.

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 18, 2024.

TRD-202404910
Adriana Cruz
Executive Director
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 936-0100

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TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.27

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

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

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

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

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total costs imposed by an amount that is equal to or greater than the cost of thee proposed rule. As described above, the SPB has determined that the proposed repeal with not impose any cost on anyone, and so §2001.0045 does not apply.

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

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

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

Request for Public Comment: To comment on the proposal, submit written comments by 5:00 p.m. (Central) on December 1, 2024, to spbadmin@tspb.texas.gov . Please add the words Rule Comments in the subject line. A request for public hearing must be in writing and sent separately from any written comments. Send these requests to spbadmin@tspb.texas.gov .

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

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

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

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

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

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

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

(4) blocking ingress and egress:

(A) into the Capitol; or

(B) into rooms or hallways within the Capitol, except as approved by the board;

(5) conducting actions that pose a risk to safety;

(6) smoking in the public areas of the Capitol and Capitol extension;

(7) bringing balloons into the Capitol or Capitol extension; and

(8) riding, leading, placing or displaying livestock, including but not limited to equine and bovine animals, except as approved by the board as part of a scheduled event, or as needed for security purposes.

(b) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purposes shall be required to:

(1) leave the Capitol when the building is closed to the public; and

(2) restrain pets at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board. All pets except service [~~Seeing Eye~~] dogs are not permitted in the Capitol.

(c) The board may require and collect a standardized fee from a person or entity that uses the Capitol, the Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The fee is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or activity. The office of the State Preservation Board shall set the amounts of fees required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities.

(d) Except as provided by this subsection, the sale or consumption of alcoholic beverages, the possession of an open container of an alcoholic beverage, or the gift of an alcoholic beverage in an open container or for on-premises consumption is prohibited in the Capitol, in the Capitol extension, and on the Capitol grounds. This prohibition does not apply to:

(1) areas not under the control of the board, including offices, reception areas, and similar areas under the control of the legislature, a legislative agency, the governor, or another state officer; or

(2) events of significant importance to the history of the Capitol that are conducted in areas under the control of the board and for which the office of the State Preservation Board has approved consumption of alcoholic beverages in response to a written request from the sponsor of the event that documents the importance of the event to the history of the Capitol.

(e) The buildings and grounds under the authority of the board shall not be used for the commercial benefit of any individual, business, corporation, special interest group or other entity.

(f) For the safety of the public, skateboarding, roller skating, roller blading, and related activities are prohibited in the building, garages, and grounds under the authority of the State Preservation Board.

(g) TV satellite trucks may not park on the Capitol drive. TV transmission cables may not be brought into the Capitol or Capitol extension.

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

Filed with the Office of the Secretary of State on October 21, 2024.

TRD-202404933
Cynthia Provine
Chief Financial Officer
State Preservation Board
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-5495

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE
SUBCHAPTER I. PERMIT PROCESSING

16 TAC §1.201

The Railroad Commission of Texas (Commission) proposes amendments to §1.201, relating to Time Periods for Processing Applications and Issuing Permits Administratively. The Commission proposes the amendments to update cross-references to other Commission rules in the rule and in the table, as well as other nonsubstantive clarifications.

The Commission proposes amendments to §1.201(a) to more closely align with Government Code §2005.003, the statute which requires adoption of §1.201. The amendments clarify that §1.201 does not apply to all permits issued by the Commission, but only those permits for which the median time for processing a permit application from receipt of the initial application to the final permit decision exceeds seven days. The proposed amendments also replace the definition of "permit" with a reference to Government Code §2005.003 to ensure the Commission's rule is consistent with the statutory definition of the term.

The table in §1.201(a) is proposed to be amended to reflect current permits, operating division names, and permit processing time periods. Sections 3.8 (relating to Water Protection) and 3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) are currently proposed to be amended in a separate Commission rulemaking. Thus, the obsolete sections of those rules and the permits issued pursuant to those rules are proposed to be removed from the table in §1.201(a). The amendments also correct other outdated references and remove permits the Commission no longer issues.

The Commission also proposes to restructure the table to limit the information for each permit to: (1) the permit and rule or law governing the permit; (2) the Commission division responsible for processing the permit; and (3) the initial and final review periods as required by Government Code §2005.003. The current table includes information on Commission forms and fees associated with the permits. However, form and fee information is more easily obtained from the Commission's website. The Commission's website is more frequently updated and allows more information about each permit to be accessible to persons seeking a permit from the Commission. The proposed amendments to the table also remove column names to simplify future updates. Column name references are proposed to be removed throughout the section and are replaced with general references to the table.

Several permit types are also proposed to be removed from the table because the permit processing time no longer exceeds seven days, the permit type is no longer issued, or the authorization does not meet the definition of a permit under Government Code §2005.003.

Finally, the Commission proposes amendments in §1.201(c)(7) and (e) to reflect the current name of the division which contains the Docket Services Section.

Paul Dubois, Assistant Director of the Oil and Gas Division and Director of Technical Permitting, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal implications for state or local governments as a result of the amendments. In addition, there is no anticipated cost for persons required to comply with the proposed amendments. The proposed amendments merely update §1.201 to provide current information regarding permit processing time periods at the Commission.

Mr. Dubois has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be transparency regarding current Commission permit review time and related requirements.

The Commission has determined that the proposed amendments will not have an adverse economic effect on rural communities, small businesses, or micro-businesses. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the amendments would be in effect, the proposed amendments would not: create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. The amendments merely update the rule to reflect current time periods for administrative review and approval of permits and other authorizations given by the Commission.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, December 2, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments.

The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Paul Dubois at (512) 463-6778. The status of Commission rulemakings in progress is available at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the amendments under Texas Government Code §2005.003, which requires a state agency that issues permits to adopt procedural rules for processing permit applications and issuing permits; Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Statutory Authority: Texas Government Code §§2005.003 and 2001.004; Texas Natural Resources Code §§81.051 and 81.052.

Cross-reference to statute: Texas Government Code Chapters 2001 and 2005; Texas Natural Resources Code Chapter 81.

§1.201. Time Periods for Processing Applications and Issuing Permits Administratively.

(a) Applicability. This rule applies to permits issued administratively by the Commission through the operating divisions listed in Table 1 of this section and for which the median permit processing time exceeds seven days. These permits are listed in [~~the permits listed in Column A of~~] Table 1 of this section. For purposes of this rule, the term "permit" has the meaning assigned in Texas Government Code Chapter 2005. [~~includes any authorization issued administratively by the Commission, through the Oil and Gas Division, the Gas Services Division, the Surface Mining and Reclamation Division, or the Rail/LP-Gas/Pipeline Safety Division, and required by the Commission either to engage in or conduct a specific activity or to deviate from requirements, standards, or conditions in statutes or Commission rules and for which the median processing time exceeds seven days~~].
Figure: 16 TAC §1.201(a)
[~~Figure: 16 TAC §1.201(a)~~]

(b) Completeness. An application is complete when the division or section shown in [~~Column B of~~] Table 1 has determined that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the division or section processing the application. For purposes of this section, certain applicants[~~, as shown in Column D of Table 1,~~] are required to have an approved organization report (Form P-5) on file with the Commission in order for an application to be complete.

(c) Time periods.

(1) The date a permit application is received under this section is the date the application reaches the designated division or section within a division as shown in [~~Column B of~~] Table 1.

(2) The division or section shown in [~~Column B of~~] Table 1 shall process permit applications in accordance with the time periods shown in [~~Columns F and G of~~] Table 1 for a particular permit. Time periods are counted on the basis of calendar days.

(3) The Initial Review Period, shown in [~~Column F of~~] Table 1, begins on the date the designated division or section receives the application and ends on the date the division or section gives written notice to the applicant indicating that either:

(A) the application is complete and accepted for filing; or

(B) the application is incomplete, as described in paragraph (4) of this subsection.

(4) If the division or section determines that an application is incomplete, the division or section shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. The Initial Review Period shall start again each time the division or section receives a supplemental filing relating to an incomplete application. After the second supplemental submission, if the application is complete, the division or section shall administratively rule on the application; if the application is still incomplete, the division or section shall administratively deny the application. The division or section specifically does not have the authority to accept or review any other additional supplemental submissions. The division or section shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands. The applicant may withdraw the application.

(5) The Final Review Period, shown in [~~Column G of~~] Table 1, begins on the date the division or section makes a determination under paragraph (3)(A) of this subsection and ends on the date the permit is:

(A) administratively granted;

(B) administratively denied; or

(C) docketed as a contested case proceeding if the application is neither administratively granted nor administratively denied.

(6) An applicant whose application has been administratively denied may request a hearing by filing a written request for a hearing addressed to the division or section processing the application, within 30 days of the date the application is administratively denied.

(7) Within seven days of either docketing an application under paragraph (5)(C) of this subsection or receiving a written request for a hearing under paragraph (6) of this subsection, the division or section processing the application shall forward the file and any request for hearing, including any memoranda or notes explaining or describing the reasons for docketing or administrative denial, to the Docket Services Section of the Hearings Division, which [~~Office of General Counsel. The Office of General Counsel~~] shall process the application as prescribed in subsection (e) of this section.

(d) Complaint procedure.

(1) An applicant may complain directly to the Executive Director if a division or section does not process an application within the applicable time periods shown in [~~Columns F and G of~~] Table 1, and may request a timely resolution of any dispute arising from the claimed delay. All complaints shall be in writing and shall state the specific relief sought, which may include the full reimbursement of any [~~the~~] fee paid in that particular application process[~~, if any, as shown in Column E of Table 1~~]. As soon as possible after receiving a complaint, the Executive Director shall notify the appropriate division director of the complaint.

(2) Within 30 days of receipt of a complaint, the division director of the division or section processing the application that is the subject of the complaint shall submit to the Executive Director a written report of the facts relating to the processing of the application. The report shall include the division director's explanation of the reason or reasons the division or section did or did not exceed the established time periods. If the Executive Director does not agree that the division or section has violated the established periods or finds that good cause existed for the division or section to have exceeded the established periods, the Executive Director may deny the relief requested by the complaint.

(3) For purposes of this section, good cause for exceeding the established period means:

(A) the number of permit applications to be processed by the division or section exceeds by at least 15 percent the number of permit applications processed by that division or section in the same quarter of the previous calendar year;

(B) the division or section must rely on another public or private entity to process all or part of the permit application received by the agency, and the delay is caused by that entity; or

(C) other conditions exist that give the division or section good cause for exceeding the established period, including but not limited to circumstances such as personnel shortages, equipment outages, and other unanticipated events or emergencies.

(4) The Executive Director shall make the final decision and provide written notification of the decision to the applicant and the division or section within 60 days of receipt of the complaint.

(e) Hearings. If an application is docketed as a contested case proceeding, it is governed by the time periods in this chapter (relating to Practice and Procedure) once the application has been filed with the Docket Services Section of the Hearings Division [~~Office of General Counsel~~].

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 15, 2024.

TRD-202404851
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 475-1295

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CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.1, 3.5, 3.7, 3.12, 3.13, 3.16, 3.17, 3.32, 3.36, 3.73, 3.78, 3.81, 3.82

The Railroad Commission of Texas (Commission) proposes amendments to §§3.1, 3.5, 3.7, 3.12, 3.13, 3.16, 3.17, 3.32, 3.36, 3.73, 3.78, and 3.81 relating to Organization Report; Retention of Records; Notice Requirements; Application To Drill, Deepen, Reenter, or Plug Back; Strata To Be Sealed Off; Directional Survey Company Report; Casing, Cementing, Drilling, Well Control, and Completion Requirements; Log and Completion or Plugging Report; Pressure on Bradenhead; Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes; Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas; Pipeline Connection; Cancellation of Certificate of Compliance; Severance; Fees and Financial Security Requirements; and Brine Mining Injection Wells. The Commission also proposes new §3.82, relating to Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells.

The Commission proposes the amendments and new rule to implement the provisions of Senate Bill (SB) 1186 (88th Legislature, Regular Session, 2023), relating to the regulation by the Commission of brine mining.

Deep brine aquifers in Texas contain substantial lithium and other valuable deposits, but an incomplete regulatory framework surrounding the brine mining industry presently inhibits the investment required to extract it. The Legislature passed SB 1186 to clarify and complete the Commission's jurisdiction over brine mining to enable this new industry to develop in Texas.

Under current law, the Commission has jurisdiction over brine mining, but to date, the only brine mining in Texas has involved injecting fluid to dissolve subsurface salt formations, then extracting the salts from the resulting artificial brines. The Commission has obtained primary enforcement authority ("primacy") for the Class III Underground Injection Control (UIC) program under the federal Safe Drinking Water Act from the United States Environmental Protection Agency (EPA) for such operations and is therefore authorized to issue permits for those brine mining injection wells.

The EPA regulates the mining of lithium from naturally occurring brines differently from how it regulates mining artificially created brines. The EPA requires wells that re-inject naturally occurring brines into the aquifer from which they were produced after the extraction of minerals ("spent brine return injection wells") to be permitted as Class V injection wells. While the Commission has jurisdiction over this type of brine mining under state law, it does not yet have primacy for the Class V UIC program from the EPA required to permit the spent brine return injection wells. Spent brine return injection wells currently are not subject to any specific regulations, but rather are subject to the federal UIC regulations that exist for all Class V wells.

SB 1186 added a definition of "brine mining" to Texas Water Code §27.036, to clarify the Commission's jurisdiction over both types of brine mining under state law. The bill also instructed the Commission to seek primacy from the EPA for Class V injection wells designed to inject spent brine into the same formation from which it was withdrawn after the extraction of minerals. Additionally, the bill clarified that the Commission's jurisdiction over brine mining includes the authority to regulate brine production wells and brine injection wells.

The amendments proposed in §§3.1, 3.5, 3.7, 3.12, 3.13, 3.16, 3.17, 3.32, 3.36, and 3.73 add references to brine resources and spent brine return injection wells as applicable or otherwise clarify requirements of those sections related to brine production and injection. The amendments proposed in §§3.1 and 3.36 also add references to geothermal resources. The amendments proposed in §3.78 add references to encompass brine resources and revise outdated language related to National Pollutant Elimination System (NPDES) permits and processing of checks.

The Commission proposes amendments to §3.81 to revise the title to Class III Brine Mining Injection Wells. The proposed amendments also clarify the definition of brine mining injection well for purposes of §3.81. That section addresses require-

ments for Class III injection wells used to inject fluid to dissolve subsurface salt formations and then extract the salts from the resulting artificial brines. SB 1186 did not impact the Commission's existing authority over Class III brine mining injection wells or any existing permits for such operations. The proposed amendments to the title will clarify that the requirements of §3.81 do not apply to brine production projects and associated injection wells, which are addressed in proposed new §3.82.

Proposed §3.82(a) describes the scope and purpose of the new rule. The proposed new rule contains regulations for brine production projects and the associated brine production wells for the extraction of elements, minerals, mineral ions, salts, or other useful substances, including, but not limited to, lithium, lithium ions, lithium chloride, halogens or halogen salts, from a subsurface formation but not including oil, gas, or any product of oil or gas, or fluid oil and gas waste. "Product of oil and gas" is defined by Natural Resources Code §85.001 and "fluid oil and gas waste" is defined by Natural Resources Code §122.001. Proposed subsection (a) also states that the section governs Class V spent brine return injection wells used in association with brine production projects for the reinjection of the spent brine. Proposed subsection (a)(2) - (6) contains other clarifications related to the scope of proposed §3.82 including that the section applies to all wells used for brine production or Class V spent brine return injection even if the well was not initially completed for that purpose; an operator of wells subject to §3.82 shall comply with all other applicable Commission rules and orders; and proposed §3.82 does not apply to Class III injection wells or to the injection of hazardous waste as defined under 40 Code of Federal Regulations (CFR) Part 261. Proposed subsection (a)(7) clarifies that the requirements contained in §3.82 apply statewide to brine production projects, regardless of the brine field from which the brine resources are produced and the spent brine reinjected. Proposed §3.82(d) establishes statewide field rules for brine production fields including assignment of acreage, well spacing, and density provisions to promote the regular development of brine resources in a manner that does not damage the reservoir. Section 3.82(d) also contains procedures for requesting exceptions to statewide spacing, density, or acreage provisions or for requesting special field rules. Proposed §3.82(a)(8) specifies that a Commission order or permit governs in the event §3.82 conflicts with a provision or term of the order or permit.

Proposed §3.82(b) contains the definitions for terms used within §3.82. Notable terms include brine, brine field, brine production project, brine production project area, brine production project permit, brine resource, Class V spent brine return injection well, and good faith claim. The proposed definition of "brine field" is a formation or the correlative depth interval designated in the field designation or rules that contains brine resources. The brine production project is a project the purpose of which is the extraction of brine resources from a brine field. The term includes brine production wells, Class V spent brine return injection wells, monitoring wells, brine flowlines, and any equipment associated with the project. The brine production project area is proposed to be defined as the surface extent of the land assigned to a brine production project, as indicated on the plat required by §3.82(e)(3)(N).

Proposed subsection (b) also contains definitions for terms commonly used in Underground Injection Control (UIC) programs such as underground source of drinking water, mechanical integrity, affected person, interested person, confining zone, and area of review. An affected person is a person who, as a result of activity sought to be permitted, has suffered, or faces a substantial risk of suffering, concrete or actual injury or economic damage other than as a member of the general public. A competitor is not an affected person unless it has suffered, or faces a substantial risk of suffering, actual harm to its interest in real property or waste of substantial recoverable substances. Area of review is proposed to be defined as the brine production project area plus a circumscribing area the width of which is one-quarter mile measured from the perimeter of the brine production project area.

Several terms in subsection (b) are proposed to ensure consistency with 40 Code of Federal Regulations §144.3 and §146.3, which contain federal definitions related to Class V UIC wells. Those terms include aquifer, containment, fault, fluid, formation, formation fluid, injection well, lithology, packer, plugging, plugging record, pressure, transmissive fault or fracture, well, well injection, and well plug.

The Commission proposes general requirements for brine production projects in §3.82(c). Brine production projects are required to be permitted in accordance with §3.82 before a person may construct or operate brine production wells or Class V spent brine return injection wells. Proposed §3.82(c)(2) specifies the persons authorized to sign applications and reports related to the brine production project. Proposed paragraph (c)(2)(A) - (C) contains requirements identical to those in §3.81 for Class III brine mining injection wells.

Proposed §3.82(c)(3) requires operators of all Class V spent brine return injection wells to re-inject spent brine into the brine field from which the brine was produced. In proposed subsection (c)(4), the Commission requires all brine production wells and Class V spent brine return injection wells be drilled and completed or recompleted, operated, maintained, and plugged in accordance with the requirements §3.82 and the brine production project permit.

Proposed subsection (c)(5) instructs the Commission to assign a lease number to the brine production project and requires that lease number to be used by the project operator on required forms and reports.

In proposed §3.82(c)(6) - (9), the Commission lists the other rules with which a brine production project shall comply. An applicant for a brine production project permit shall comply with Commission regulations in §§3.1, 3.5, 3.11, 3.12, 3.16, 3.17, 3.18, 3.19, 3.36, and 3.80. An applicant for a brine production project shall also comply with 3.13, 3.14, 3.15, 3.35, and 3.78, but the Commission proposes additional requirements specifically applicable to brine production projects in subsection (c)(7) - (9). Proposed §3.82(c)(7) requires that, in addition to the requirements of §3.13, all wells associated with a brine production project use casing and cement designed to withstand the anticipated pressurization and formation fluids that are capable of negatively impacting the integrity of casing and/or cement such that it presents a threat to underground sources of drinking water or oil, gas, or geothermal resources. Surface casing is required to be set at the depth determined by the Geologic Advisory Unit. Although generally the Commission accepts requests for alternative surface casing depths, such requests will not be considered for brine production projects.

Proposed §3.82(c)(8) states that the requirements of §§3.14, 3.15, and 3.35 apply to all wells associated with a brine production project, except that the well operators shall plug all wells associated with a brine production project and remove all wastes,

storage vessels, and equipment from the site within one year of cessation of brine production project operations.

Proposed §3.82(c)(9) requires all operators of wells drilled and operated in association with a brine production project to comply with the requirements of §3.78 as the requirements are applicable to brine production projects, except that, prior to spudding, the operator shall provide financial security in an amount estimated to plug each well in the brine production project after cessation of brine production project operations. Also, proposed subsection (c)(9) states that for an operator of a brine production project who has satisfied its financial security requirements by filing a cash deposit, the Commission shall refund to the operator the amount estimated to plug each well following its plugging if the amount of the deposit remaining after the refund would be sufficient to plug all remaining wells in the brine production project.

Proposed §3.82 (c)(10) prohibits any person from knowingly making any false statement, representation, or certification in any application, report, record, or other document submitted or required to be maintained under §3.82 or under any permit issued pursuant to §3.82. Proposed subsection (c)(10) also prohibits any person from falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under §3.82 or under any permit issued pursuant to that section.

Proposed subsection (d) contains statewide field rules for spacing, acreage, and density of brine production projects. The subsection also addresses the process for requesting an exception to the statewide rules or adopting field rules for a particular brine field. Regarding spacing requirements, proposed subsection (d)(1) requires that all brine production wells and Class V spent brine return injection wells be completed within the brine production project area, which is defined in proposed subsection (b) as the surface extent of the land assigned to a brine production project, as indicated on the plat required by subsection (e)(3)(N). Any well must also be located no less than one-half mile from the boundary of the brine production project area and no less than one-half mile from any interest within the brine production project area that is not participating in the project. Special field rules or an exception obtained pursuant to subsection (d)(4) may alter the spacing requirements. Proposed subsection (d)(2) contains the acreage and density requirements for brine production projects. An applicant for a brine production project permit shall designate and assign acreage within the applicable brine field to the brine production project. Proposed §3.82(e)(3) requires the applicant to designate the total number of acres included in the brine production project area as part of the permit application. The minimum amount of acreage that must be assigned is 1,280 acres per brine production well included in the brine production project, unless special field rules provide different well density requirements or the applicant obtains an exception pursuant to subsection (d)(4). The maximum amount of acreage that may be assigned to a brine production well is 5,120 acres, unless special field rules apply. This requirement is proposed in subsection (d)(2)(C).

Proposed §3.82(d)(2)(B) and (D) contain requirements for operators of brine production projects that elect to file a plat assigning acreage in the brine production project area to a brine production well. Operators are not required to assign acreage to an individual brine production well as long as the total number of acres assigned to the brine production project area divided by the total number of brine production wells equals or exceeds 1,280 acres. If the operator elects to file a plat assigning acreage to a brine production well, proposed subsection (d)(2)(D) requires that the two farthermost points of acreage assigned to the well not exceed 23,760 feet, and the acreage assigned shall include all productive portions of the wellbore. The maximum diagonal proposed in subsection (d)(2)(D) is intended to prevent acreage designation resulting in an irregular shape. The diagonal of 23,760 feet assumes the maximum 5,120 acres has been assigned to the well, creating an acreage assignment in the shape of a rectangle that is two miles wide and four miles long. For this acreage designation, 23,760 feet is the farthest diagonal between two points on opposite sides of the rectangle. Special field rules may alter the maximum diagonal.

Proposed §3.82(d)(2)(E) prohibits multiple assignment of the same acreage in a brine field to more than one brine production well. Proposed subsection (d)(2)(F) requires that acreage included in a brine production project area consist of acreage for which the operator has a good faith claim to produce brine resources. Non-contiguous acreage included in the same brine production project area may not be separated by greater than the minimum spacing distance for wells; however, an operator may obtain an exception to the contiguity requirements pursuant to paragraph (d)(4)(C).

Proposed §3.82(d)(3) contains the required procedure for requesting a brine field designation and special field rules. Prior to submitting a request for special field rules which depart from the statewide spacing, acreage, and density requirements proposed in subsection (d)(1) and (d)(2), a new brine field must be designated by the Commission pursuant to the procedure proposed in subsection (d)(3). Proposed subsection (d)(3)(A) contains the required components of a request for a new field designation.

In §3.82(d)(3)(B), the Commission proposes the procedure and requirements for temporary and permanent field rules that differ from the statewide field rules in proposed in subsection (d)(1) and (d)(2). The Commission will accept applications for temporary brine field rules after the first well has been completed in a brine field. The applicant shall furnish the Commission with a list of the names and addresses of all operators of wells within five miles of the brine discovery well so that notice may be provided prior to the hearing. At the hearing on the adoption of temporary brine field rules, the applicant bears the burden of establishing that each of the proposed temporary brine field rules is reasonably expected to protect freshwater resources, protect correlative rights, prevent waste of recoverable brine resources, and promote the production of additional brine resources in an orderly and efficient manner. Proposed subsection (d)(3)(B) states that any temporary brine field rules adopted after a hearing remain in effect until 18 months after adoption or until permanent brine field rules are adopted. As proposed in subsection (d)(3)(C), an operator of a brine production well in the brine field subject to temporary field rules may request a hearing to adopt permanent field rules after the temporary rules have been effective for at least 12 months. The adoption of permanent brine field rules requires a hearing held after notice to operators within five miles of the brine discovery well. If permanent field rules are not adopted, temporary field rules expire after 18 months and the statewide field requirements of §3.82 apply to operations within the applicable brine field.

Proposed §3.82(d)(4) contains the required procedure for an operator of a brine production project that seeks an exception to the spacing, density, or acreage requirements in subsection (d). An exception to these requirements may be granted after a public

hearing held after notice to all persons described in proposed subsection (d)(4). Persons required to receive notice of a request for a spacing or density exception are specified in proposed subsection (d)(4)(B), and persons required to receive notice of a request for an exception to contiguity requirements are specified in proposed subsection (d)(4)(C). At the hearing on an exception, the applicant has the burden to establish an exception is necessary to prevent waste or protect correlative rights.

Proposed §3.82(e) contains the application requirements for a brine production project permit. Applications for a brine production project permit shall be submitted to the Director in compliance with proposed subsection (e). A brine production project permit application is similar to an application for an area permit, which is addressed in §3.46(k) of this title, relating to Fluid Injection into Productive Reservoirs. The applicant for a brine production project permit is not required to submit applications for individual production and injection well permits at the same time the applicant files the brine production project permit application. Rather, the applicant is required to submit the information required by proposed subsection (e)(3) and shall also submit an application for at least one injection well. Unless the permit states otherwise, the brine production project operator may operate additional brine production wells and Class V spent brine return injection wells as part of the brine production project after the brine production project permit is issued; however, the operator shall obtain permits for those wells prior to commencing operations. The requirements for obtaining a Class V spent brine return injection well permit are proposed in §3.82(e)(4).

Proposed subsection (e)(3) specifies the required contents of a brine production project permit application, including the estimated maximum number of brine production wells and Class V spent brine return injection wells that will be operated within the brine production project; the total number of acres included in the proposed brine production project area; the brine field from which the brine will be produced and spent brine reinjected; complete electric logs of representative brine production wells and the Class V spent brine return injection wells or complete electric logs of representative nearby wells; wellbore diagrams showing the completions that will be used for brine production wells and Class V spent brine return injection wells; information to characterize the brine field from which the brine will be produced and into which the spent brine will be reinjected; and information to characterize the proposed confining zone.

Proposed subsection (e)(3) also contains requirements for the permit application to include the proposed operating data; a letter from the Geologic Advisory Unit of the Oil and Gas Division of the Railroad Commission of Texas stating that the use of the brine field for the injection of spent brine will not endanger usable quality water or USDWs; and an accurate plat showing the entire extent of the area of review. Proposed subsection (e)(3)(M) contains the elements required to be included on the plat. For example, subsection (e)(3)(M)(ii) requires the plat to reflect the location, to the extent anticipated at the time of the application, of each well within the area of review that the applicant intends to use for the brine production project including each existing well that may be converted to brine production or Class V spent brine return injection, each well the applicant intends to drill for brine production, each well the applicant intends to drill for project monitoring, and each Class V spent brine return injection well.

In §3.82(e)(3)(N), the Commission proposes to require the applicant for a brine production project to provide an additional plat showing the outline of the brine production project area and the following: (1) the operators of tracts in the brine production project area and tracts within the area of review; (2) owners of all leases of record for tracts that have no designated operator in the brine production project area and within the area of review; (3) owners of record of unleased mineral interests within the brine field for tracts in the brine production project area and tracts within the area of review; and (4) surface owners of tracts in the brine production project area and within the area of review. The plat shall include a list of the names and addresses of all persons listed in subsection (e)(3)(N) or the applicant may list the names and addresses on a separate sheet attached to the plat. "Operator" is defined in proposed §3.82(b) as a person, acting for itself or as an agent for others and designated to the Commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the Commission. The applicant shall determine the names and addresses of the surface owners from the current county tax rolls or other reliable sources and shall identify the source of the list. The operators and other persons indicated on the plat are among the persons required to be notified of the permit application under proposed §3.82(f).

Additional contents required to be included in the permit are proposed in §3.82(e)(3)(O) through (e)(3)(T). Several of the provisions are modeled after existing Commission requirements for injection well permit applications. For example, proposed §3.82(e)(3)(P) requires a survey of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles centered around the proposed injection well location. This requirement is also found in §3.9 of this title (relating to Disposal Wells) and §3.46 of this title.

In proposed §3.82(e)(4), the Commission proposes requirements for Class V spent brine return injection well permits. An operator of a Class V spent brine return injection well shall file an application for an individual well permit prior to commencement of injection operations into any Class V spent brine return injection well within the brine production project area. The required contents of the application are proposed in §3.82(e)(4)(A) through (e)(4)(F).

In §3.82(e)(5), the Commission proposes to include criteria for exempted aquifers, and in proposed subsection (e)(6), the Commission requires all Class V spent brine return injection wells covered by a brine production project permit to be completed, operated, maintained, and plugged in accordance with the requirements of subsection (j) and the brine production project permit. Regarding exempted aquifers, the Commission adopts 40 CFR §144.7 and §146.4 by reference effective January 6, 2025, which is the anticipated effective date for the proposed new rule and amendments. The Commission will update this date upon adoption if necessary to reflect the actual effective date.

Proposed subsection (f) contains the notice requirements for a brine production project. Proposed §3.82(f)(1) requires a brine production project permit applicant to identify whether any portion of the area of review (AOR) encompasses an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. If the AOR includes an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities, including a public meeting. Other efforts to include EJ and Limited English-Speaking Household communities are required in proposed subsection (f)(1)(A) - (E).

An applicant for a brine production project permit is required to provide notice of its application to the persons identified in proposed subsection (f)(2). The first few categories of notice recipients match the persons identified on the plat required by proposed subsection (e)(3)(N). In addition, the applicant is required to notify the city clerk or other appropriate city official of a city for which any portion falls within the area of review, the county clerk of any county or counties for which any portion falls within the area of review, and any other person designated by the Director.

Proposed §3.82(f)(2)(B) requires the applicant to mail or deliver notice in a form approved by the Commission. Notice shall be provided after Commission staff determines the application is complete. In addition, the applicant is required to publish notice of the brine production project permit application in a form approved by the Commission in a newspaper of general circulation of any county or counties for which any portion falls within the area of review. The first notice shall be published at least 14 days before the protest deadline in the notice of application and the notice shall be published once each week for two consecutive weeks. The applicant shall file a publisher's affidavit or other evidence of publication with the permit application.

Proposed §3.82(f)(2)(C) specifies the information that the applicant must include in the notice. The required information includes a copy of the plat required by subsection (e)(3)(M) and a statement than an affected person may file a protest within 30 days of the date of the notice and an interested person may submit comments to the Commission within 30 days of the date of the notice.

Proposed §3.82(f)(2)(D) and (E) clarify the notice requirements for individual Class V spent brine return injection wells and brine production wells. Once an applicant complies with the notice required to obtain a brine production project permit and the permit has been issued, no notice shall be required when filing an application for an individual injection well permit for any Class V spent brine return injection well or brine production well covered by the brine production permit unless otherwise provided in the permit or unless the applicant requests an exception.

Proposed §3.82(f)(3) specifies that an affected person has 30 days to file a protest and an interested person has 30 days to submit written comments on the brine production project permit application. Proposed subsection (f)(4) outlines when the Commission will hold a hearing on the brine production project permit application. The Commission will hold a hearing when the Commission receives a written protest from an affected person within 30 days after notice of the application is given in accordance with subsection (f) of this section, when the Director denies the application and the operator requests a hearing within 30 days of the notice of administrative denial, when the Director issues the permit and the operator requests a hearing to contest certain permit conditions; or when the Director determines that a hearing is in the public interest. Notice of a hearing will be given at least 30 days before the hearing.

In proposed §3.82(g), the Commission outlines the process for review of brine production project permit applications, including procedures for determining whether the application is complete and notifying the applicant of any deficiencies in the application. The permit may be administratively approved by the Director if a hearing is not required to be held pursuant to proposed subsection (f)(4) and the applicant provides sufficient evidence to demonstrate that the brine production project will not endanger USDWs or human health or the environment.

Proposed subsection (g)(2) addresses amendments to a permit. If a permittee seeks to make changes to brine production project and the changes are substantial, such as changing the exterior boundaries of, or maximum number of wells authorized in, the brine production project area, then the changes cannot be made unless the permittee files an application to amend the permit. An application to amend is also required if the permittee seeks to alter permit conditions.

Proposed §3.82(h) addresses procedures for Commission action on a permit including modification, revocation and reissuance, and termination. Proposed paragraphs (h)(1) and (2) outline the changes that constitute cause for modification or revocation and reissuance compared to minor changes that can be made administratively. Proposed (h)(3) specifies the causes for Commission termination of a permit during its term or for denying a permit renewal application. The causes for termination include conditions such as the permittee fails to comply with any condition of the permit or §3.82; the permittee misrepresents a relevant fact; or the Commission determines that the permitted injection endangers human health or the environment.

Proposed §3.82(i) contains the standard permit conditions that will be included in a brine production project permit. In proposed §3.82(i)(1), the Commission requires a brine production project permittee to provide access to the project facilities and records to Commission staff members. Similarly, proposed §3.82(i)(2) states the Commission may make any tests on any well at any time necessary for regulation of wells under this section, and the operator of such wells shall comply with any directives of the Commission to make such tests in a proper manner.

Proposed subsections (i)(3) - (19) contain additional permit conditions on topics including maintenance of financial assurance; the permit term and requirement for the permit to be reviewed once every five years; permit transfers, renewals, and other actions; monitoring, records, and reporting; plugging; identification; and dikes or fire walls.

Proposed §3.82(j) contains additional standard permit conditions for Class V spent brine return injection wells. The permit conditions proposed in subsection (j) apply in addition to the conditions imposed in subsection (i). Importantly, the permit standards for Class V spent brine return injection wells prohibit operating a Class V spent brine return injection well in a manner that allows: (1) fluids to escape into USDWs from the brine field from which it was produced; (2) fluid to escape from the permitted brine field; or (3) the movement of fluids containing any contaminant into USDWs. If the permittee violates these conditions, the permittee is required to immediately cease injection operations.

Proposed subsection (j)(4) specifies drilling and construction requirements for Class V spent brine return injection wells. In addition to the casing and cementing requirements of §3.13, the operator of a Class V spent brine return injection well shall set and cement surface casing from at least 100 feet below the lowermost base of usable quality water to the surface, regardless of the total depth of the well; set and cement long string casing at a minimum from the top of the brine field to the surface, unless the Director approves an alternate completion for good cause; and determine the integrity of the cement by a cement bond log. For newly drilled wells, the operator shall drill a sufficient depth into the brine field to ensure that when the well is logged prior to setting the long string the operator will be able to identify the top of the brine field and verify that the fluid will be injected only into the brine field. The Commission shall be provided with an

opportunity to witness the setting and cementing of casing and running of cement bond logs. Thus, the operator is required to notify the appropriate Commission district office at least 15 days in advance of these activities.

Proposed subsection (j)(4)(D) requires the operator of the Class V spent brine return injection well to provide to the Commission a descriptive report interpreting the results of logs and tests conducted to verify the depth to the top of the brine field, adequacy of cement behind the casing strings, and injectivity and fracture pressure of the brine field. The report shall be prepared by a knowledgeable log analyst and submitted to the Director. Proposed subsection (j)(4)(E) and (F) require a Class V spent brine return injection well to be equipped with tubing and packer set within 100 feet of the top of the brine field and a pressure observation valve on the tubing and for each annulus. Proposed subsection (j)(4)(G) prohibits injection operations in a new Class V spent brine return injection well until the Director receives and reviews the completion report.

Proposed subsection (j)(5) contains the minimum permit conditions relating to how the Class V spent brine return injection well must be operated. All Class V spent brine return injection shall be into the same brine field from which the brine was extracted by the brine production wells. All injection shall be through tubing set on a packer. The packer shall be set within 100 feet of the top of the permitted injection interval unless the Director approves an exception. Except during well stimulation, injection pressure at the wellhead shall not exceed the maximum pressure calculated to assure that the injection pressure does not initiate new fractures or propagate existing fractures in the brine field. In no case may the injection pressure initiate fractures in the confining zone or cause the escape of injection or formation fluids from the brine field.

Proposed subsection (j)(5)(D) requires the operator to fill the annulus between the tubing and long string casing with a corrosion inhibiting fluid. All injection wells shall maintain an annulus pressure sufficient to indicate mechanical integrity unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs. The annulus pressure shall be monitored by a pressure chart or digital pressure gauge. The operator shall provide the Director with a written report and explanation of any change in annulus pressure that would indicate a leak or lack of mechanical integrity within 15 days of detecting the change in pressure. An annulus pressure change exceeding 10% is an example of a change that indicates a leak or lack of mechanical integrity.

Proposed subsection (j)(5)(E) requires the operator to notify the appropriate Commission district office at least 48 hours prior to the beginning of a workover or corrective maintenance operations that involve the removal of the tubing or well stimulation. The operator must conduct a mechanical integrity test on the well after the workover if the packer is unseated during the workover.

The permit condition proposed in subsection (j)(6) specifies that, if necessary to prevent movement of fluid into USDWs, corrective action will be required for all known wells in the area of review that penetrate the top of the brine field for which the operator cannot demonstrate proper completion, plugging, or abandonment.

Section 3.82(j)(7) addresses proposed requirements for mechanical integrity. A Class V spent brine return injection well may not be used if it lacks mechanical integrity. The operator shall demonstrate the mechanical integrity of a Class V spent brine return injection well to the satisfaction of the Director. Proposed subsection (j)(7)(A) - (E) contain requirements for demonstrating mechanical integrity, including internal and external mechanical integrity. The Director may approve an alternate method for demonstrating mechanical integrity if the administrator of the EPA also approves the method.

Proposed subsection (j)(7)(G) and (H) outline the required timing and notice for mechanical integrity testing. Subsection (j)(7)(I) states that the permittee is required to file a complete record of the test, including a copy of the pressure record, with the Commission within 30 days after the test.

Proposed subsection (j)(7)(J) specifies permit conditions relating to wells that fail to demonstrate mechanical integrity. If the permittee or the Director finds that the well fails to demonstrate mechanical integrity during a test, fails to maintain mechanical integrity during operation, or that a loss of mechanical integrity is suspected during operation, the permittee shall halt injection immediately. The Director may allow continued injection if the permittee can establish continued injection will not endanger USDWs. The permittee shall orally report the failure of mechanical integrity to the Director within 24 hours from the time the permittee becomes aware of the failure, and the permittee shall include an anticipated date for a mechanical integrity demonstration. In addition, all wells that fail to pass a mechanical integrity test shall be repaired or plugged and abandoned within 90 days of the failure date unless the Director extends the 90-day timeline for good cause. The well is to be shut-in immediately after failure to pass the mechanical integrity test and shall remain shut-in until it passes a mechanical integrity test or is plugged and abandoned. Within 15 days of a failure of mechanical integrity, a written plan to restore mechanical integrity shall be submitted to the Director. The plan must be approved by the Director. The permittee shall not resume injection until the well demonstrates mechanical integrity.

In §3.82(j)(8) the Commission proposes permit conditions for Class V spent brine return injection wells relating to required monitoring, record-keeping, and reporting. Proposed subsection (j)(8) contains requirements for how long monitoring information shall be retained, the contents of the monitoring records, and reports that shall be made to the Commission, including reports of noncompliance that may endanger USDWs, human health, or the environment. Proposed subsection (j)(9) requires the permittee to provide the Commission notice 48 hours before performing any workover or corrective maintenance operations that involve the unseating of the packer or well stimulation. Subsection (j)(10) specifies that the Commission may establish additional permit conditions for Class V spent brine return injection wells on a case-by-case basis.

Proposed §3.82(k) describes the consequences for violations of §3.82. Any well drilled or operated in violation of §3.82 without a permit shall be plugged. In addition, violations of the requirements of §3.82 may subject the operator to penalties and remedies specified in the Texas Water Code, Chapter 27, and the Natural Resources Code, Title 3. A brine production well in violation of §3.82 may have its certificate of compliance revoked in the manner provided in subsections §3.73(d) - (g), (i) - (k) of this title (relating to Pipeline Connection; Cancellation of Certification of Compliance; Severance).

Proposed §3.82(l) clarifies that administrative actions taken pursuant to the provisions of §3.82 are subject to review by the commissioners. Proposed §3.82(m) clarifies references to the Code of Federal Regulations (CFR) within §3.82 and states where the federal regulations are available for review.

Finally, in §3.82(n) the Commission clarifies the proposed effective date for the section. The Commission will seek primacy from the United States Environmental Protection Agency so that the Commission may administer the Class V UIC program for spent brine return injection wells. The regulations in §3.82 pertaining to Class V spent brine return injection wells become effective upon EPA approval of the Commission's program. Until then, an operator of a brine production project must obtain a permit from the EPA to operate a Class V spent brine return injection well. All other regulations proposed in §3.82 become effective as provided in the Administrative Procedure Act, in Section 2001.001 et seq. of the Texas Government Code. The Commission anticipates the effective date of the proposed new rule and amendments will be January 6, 2025.

Leslie Savage, Chief Geologist, has determined that for each year of the first five years the new rule and amendments as proposed will be in effect, there will be minimal fiscal implications to the Commission as a result of enforcing or administering the amendments. Any costs associated with the amendments would be due to minor programming to update online systems. There will be no fiscal effect on local government.

Ms. Savage has determined that for the first five years the proposed new rule and amendments are in effect, the primary public benefit will be clarity regarding jurisdiction over brine production wells and Class V spent brine return injection wells in compliance with SB 1186.

Ms. Savage has determined that for each year of the first five years that the new rule and amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed new rule and amendments. The proposed new rule and amendments merely provide a regulatory scheme for operations related to brine resources as required by the Legislature. There are forms, financial security, and fee requirements imposed if a person engages in activities regulated by the Commission. However, the proposed new rule does not impose these costs - the requirements apply to any activity under the Commission's jurisdiction.

The Commission has determined that the proposed new rule and amendments will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed new rule and amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed new rule and amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed new rule and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the proposed new rule and amendments would be in effect, the proposed new rule and amendments would not create or eliminate any employee positions or require an increase or decrease in future legislative appropriations. The Commission has determined that the new program can be implemented with current resources. The proposed new rule would create a new government program and regulations as required by SB 1186, expand existing regulations to encompass this new resource, and will positively impact the state's economy. The proposed new rule and amendments would increase the number of individuals subject to the Commission's rules. Prior to SB 1186 it was unclear which rules applied to brine production projects. Because SB 1186 provided the Commission with authority to oversee such projects, those who wish to engage in a brine production project are now subject to the new requirements. The proposed new rule and amendments may increase fees paid to the agency - the Commission may receive more applications for P-5 Organization Reports, drilling permits, injection wells, exceptions, and corresponding fees from operators engaging in the activities regulated under proposed new §3.82.

Comments on the new rule and proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 noon on Monday, December 2, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the new rule and amendments pursuant to Senate Bill 1186 and Texas Water Code §27.036, which provide the Commission jurisdiction over brine mining and authorize the Commission to issue permits for brine production wells and injection wells used for brine mining, and also instruct the Commission to adopt rules necessary to administer and regulate brine mining; Texas Natural Resources Code §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 102, which gives the Commission the authority to establish pooled units for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202 and Chapter 102; Texas Water Code §27.036.

Cross reference to statute: Texas Natural Resources Code Chapters 81, 85, and 102; Water Code Chapter 27.

§3.1. Organization Report; Retention of Records; Notice Requirements.

(a) Filing requirements.

(1) Except as provided under subsection (e) of this section, no organization, including any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission shall perform such operations without having on file with the Commission an approved organization report and financial security as required by Texas Natural Resources Code §§91.103 - 91.1091. Operations within the jurisdiction of the Commission include, but are not limited to, the following:

(A) drilling, operating, or producing any oil, gas, brine, geothermal resource, spent brine return injection, brine mining injection, fluid injection, or oil and gas waste disposal well;

(B) transporting, reclaiming, treating, processing, or refining crude oil, gas and products, brine resources, or geothermal resources and associated minerals;

(C) - (K) (No change.)

(2) - (10) (No change.)

(b) Record requirements. All entities who perform operations which are within the jurisdiction of the Commission shall keep books showing accurate records of the drilling, redrilling, or deepening of wells, the volumes of crude oil on hand at the end of each month, the volumes of oil, gas, brine, and geothermal resources produced and disposed of, together with records of such information on leases or property sold or transferred, and other information as required by Commission rules and regulations in connection with the performance of such operations, which books shall be kept open for the inspection of the Commission or its representatives, and shall report such information as required by the Commission to do so.

(c) - (d) (No change.)

(e) Issuance of permits to organizations without active organization reports.

(1) Notwithstanding contrary provisions of this section, the Commission or its delegate may issue a permit to an organization or individual that does not have an active organization report or does not ordinarily conduct [~~oil and gas~~] activities under the jurisdiction of the Commission when the issuance of such a permit is determined to be necessary to implement a compliance schedule, or to remedy circumstances or a violation of a Commission rule, order, license, permit, or certificate of compliance relating to safety or the prevention of pollution. For permits issued under this subsection, the Commission or its delegate may impose special conditions or terms not found in like permits issued pursuant to other Commission rules. Any organization or individual who requests such a permit shall file an organization report and any other required forms for record-keeping purposes only. The report or form shall contain all information ordinarily required to be submitted to the Commission or its delegate.

(2) This section shall not limit the Commission's authority to plug or to replug wells or to clean up pollution or unpermitted discharges of [~~oil and gas~~] waste under the jurisdiction of the Commission.

(f) - (g) (No change.)

(h) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission or its delegate may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required by §3.78(b)(8) [~~§3.78(b)(9)~~] of this title (relating to Fees and Financial Security Requirements) and the Commission or its delegate issues the certificate of compliance required for that well.

§3.5. Application To Drill, Deepen, Reenter, or Plug Back.

(a) Requirements for spacing, density, and units. An application for a permit to drill, deepen, plug back, or reenter any oil well, gas well, brine production well, or geothermal resource well shall be made under the provisions of §§3.37, 3.38, 3.39, [~~and/or~~] 3.40, and/or 3.82 of this title (relating to Statewide Spacing Rule; Well Densities; Proration and Drilling Units: Contiguity of Acreage and Exception Thereto; [~~and~~] Assignment of Acreage to Pooled Development and Proration Units; and Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells) (Statewide Rules 37, 38, 39, [~~and~~] 40, and 82), or as an exception thereto, or under special rules governing any particular oil, gas, brine, or geothermal resource field or as an exception thereto and filed with the commission on a form approved by the commission. An application must be accompanied by any relevant information, form, or certification required by the Railroad Commission or a commission representative necessary to determine compliance with this rule and state law.

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

(1) Application--Request by an organization made either on the prescribed form or electronically pursuant to procedures for electronic filings adopted by the commission for a permit to drill, deepen, plug back, or reenter any oil well, gas well, brine production well, or geothermal resource well.

(2) - (3) (No change.)

(c) - (d) (No change.)

(e) Exploratory and specialty wells. An application for any exploratory well or cathodic protection well that penetrates the base of the fresh water strata, fluid injection well, injection water source well, disposal well, brine production well, brine solution mining well, spent brine return injection well, or underground hydrocarbon storage well shall be made and filed with the commission on a form approved by the commission. Operations for drilling, deepening, plugging back, or reentering shall not be commenced until the permit has been granted by the commission. For an exploratory well, an exception to filing such form prior to commencing operations may be obtained if an application for a core hole test is filed with the commission.

(f) - (h) (No change.)

§3.7. Strata To Be Sealed Off.

Whenever hydrocarbon, brine or geothermal resource fluids are encountered in any well drilled for oil, gas, brine, or geothermal resources in this state, such fluid shall be confined in its original stratum until it can be produced and utilized without waste. Each such stratum shall be adequately protected from infiltrating waters. Wells may be drilled deeper after encountering a stratum bearing such fluids if such drilling shall be prosecuted with diligence and any such fluids be confined in its stratum and protected as aforesaid upon completion of the well. The commission will require each such stratum to be cased off and protected, if in its discretion it shall be reasonably necessary and proper to do so.

§3.12. Directional Survey Company Report.

(a) For each well drilled for oil, gas, brine, or geothermal resources for which a directional survey report is required by rule, regulation, or order, the surveying company shall prepare and file the following information. The information shall be certified by the person

having personal knowledge of the facts, by execution and dating of the data compiled:

(1) - (7) (No change.)

(b) (No change.)

§3.13. Casing, Cementing, Drilling, Well Control, and Completion Requirements.

(a) General. Operators shall comply with this section for any wells that will be spudded on or after January 1, 2014.

(1) (No change.)

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

(A) - (C) (No change.)

(D) Productive zone--Any stratum known to contain oil, gas, brine, or geothermal resources in commercial quantities in the area.

(E) - (P) (No change.)

(3) - (5) (No change.)

(6) Well control.

(A) (No change.)

(B) Well control equipment.

(i) (No change.)

(ii) For wells in areas with hydrogen sulfide, the operator shall comply with §3.36 of this title (relating to Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas).

(iii) - (x) (No change.)

(C) - (G) (No change.)

(7) - (10) (No change.)

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

§3.16. Log and Completion or Plugging Report.

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

(1) - (3) (No change.)

(4) Well--A well drilled for any purpose related to exploration for or production or storage of oil or gas or brine or geothermal resources, including a well drilled for injection of fluids to enhance hydrocarbon recovery, injection of spent brine return fluids, disposal of produced fluids, disposal of waste from exploration or production activity, or brine mining.

(b) - (e) (No change.)

§3.17. Pressure on Bradenhead.

(a) (No change.)

(b) Any well showing pressure on the Bradenhead, or leaking gas, oil, brine, or geothermal resource between the surface and the production or oil string shall be tested in the following manner. The well shall be killed and pump pressure applied through the tubing head. Should the pressure gauge on the Bradenhead reflect the applied pressure, the casing shall be condemned and a new production or oil string shall be run and cemented. This method shall be used when the origin of the pressure cannot be determined otherwise.

§3.32. Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes.

(a) - (d) (No change.)

(e) Gas Releases to be Burned in a Flare.

(1) (No change.)

(2) Gas releases authorized under this section must be managed in accordance with the provisions of §3.36 of this title (relating to Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas) when applicable.

(3) - (4) (No change.)

(f) - (j) (No change.)

§3.36. Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas.

(a) Applicability. Each operator who conducts operations as described in paragraph (1) of this subsection shall be subject to this section and shall provide safeguards to protect the general public from the harmful effects of hydrogen sulfide. This section applies to both intentional and accidental releases of hydrogen sulfide.

(1) Operations including drilling, working over, producing, injecting, gathering, processing, transporting, and storage of hydrocarbon, brine, or geothermal fluids that are part of, or directly related to, field production, transportation, and handling of hydrocarbon, brine, or geothermal fluids that contain gas in the system which has hydrogen sulfide as a constituent of the gas, to the extent as specified in subsection (c) of this section, general provisions.

(2) (No change.)

(b) - (e) (No change.)

§3.73. Pipeline Connection; Cancellation of Certificate of Compliance; Severance.

(a) - (i) (No change.)

(j) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required pursuant to §3.78(b)(8) [~~§3.78(b)(9)~~] of this title (relating to Fees and Financial Security Requirements) and the Commission issues the certificate of compliance required for that well.

(k) (No change.)

§3.78. Fees and Financial Security Requirements.

(a) (No change.)

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) - (7) (No change.)

[~~(8) With each application for a permit to discharge to surface water other than a permit for a discharge that meets national pollutant discharge elimination system (NPDES) requirements for agricultural or wildlife use, the applicant shall submit to the Commission a nonrefundable fee of $300.~~]

(8) [~~(9)~~] If a certificate of compliance for a well or a lease [~~an oil lease or gas well~~] has been canceled for violation of one or more Commission rules, the operator shall submit to the Commission a nonrefundable fee of $300 for each severance or seal order issued for the well or lease before the Commission may reissue the certificate

pursuant to §3.58 of this title (relating to Certificate of Compliance and Transportation Authority; Operator Reports) (Statewide Rule 58).

(9) [~~(10)~~] With each application for issuance, renewal, or material amendment of an oil and gas waste hauler's permit, the applicant shall submit to the Commission a nonrefundable fee of $100.

(10) [~~(11)~~] With each Natural Gas Policy Act (15 United States Code §§3301-3432) application, the applicant shall submit to the Commission a nonrefundable fee of $150.

(11) [~~(12)~~] Hazardous waste generation fee. A person who generates hazardous oil and gas waste, as that term is defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), shall pay to the Commission the fees specified in §3.98(z).

(12) [~~(13)~~] Inactive well extension fee.

(A) For each well identified by an operator in an application for a plugging extension based on the filing of an abeyance of plugging report on Commission Form W-3X, the operator must pay to the Commission a non-refundable fee of $100.

(B) For each well identified by an operator in an application for a plugging extension based on the filing of a fluid level or hydraulic pressure test that is not otherwise required to be filed by the Commission, the operator must pay to the Commission a non-refundable fee of $50.

(13) [~~(14)~~] Groundwater protection determination letters.

(A) With each individual request for a groundwater protection determination letter, the applicant shall submit to the Commission a nonrefundable fee of $100.

(B) With each individual application for an expedited letter of determination stating the total depth of surface casing required for a well in accordance with Texas Natural Resources Code, §91.0115(b), the applicant shall submit to the Commission a nonrefundable fee of $75, in addition to the fee required by subparagraph (A) of this paragraph.

(14) [~~(15)~~] An operator must make a check or money order for any of the aforementioned fees payable to the Railroad Commission of Texas. If the check accompanying an application is not honored upon presentment, the Commission or its delegate may suspend or revoke the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the certificate of compliance reissued, or the Natural Gas Policy Act category determination made on the basis of the application.

(15) [~~(16)~~] If an operator submits a check that is not honored on presentment, the operator shall[~~, for a period of 24 months after the check was presented,~~] submit the payment [~~any payments~~] in the form of a credit card, cashier's check, or cash.

(c) - (l) (No change.)

(m) Effect of outstanding violations.

(1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for a well or a lease [~~an oil lease or gas well~~] submitted by an organization if:

(A) - (B) (No change.)

(2) - (3) (No change.)

(n) (No change.)

§3.81. Class III Brine Mining Injection Wells.

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

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

(3) Brine mining injection well--A Class III UIC well used to inject fluid for the purpose of extracting brine by the solution of a subsurface salt formation. The term "brine mining injection well" does not include a well used to inject fluid for the purpose of leaching a cavern for the underground storage of hydrocarbons or the disposal of waste, or a well used to inject fluid for the purpose of extracting sulphur by the thermofluid mining process.

(4) - (11) (No change.)

(b) - (e) (No change.)

(f) Conditions applicable to all permits. The conditions specified in this subsection apply to all permits.

(1) - (17) (No change.)

(18) Plugging. Within one year after cessation of brine mining injection operations, the operator shall plug the well in accordance with §3.14(a) and (c) - (h) [~~(c)(h)~~] of this title (relating to Plugging) (Rule 14(a) and (c) - (h)). For good cause, the director may grant a reasonable extension of time in which to plug the well if the operator submits a proposal that describes actions or procedures to ensure that the well will not endanger fresh water during the period of the extension.

(g) - (l) (No change.)

§3.82. Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells.

(a) Scope and purpose.

(1) This section contains the regulations for:

(A) brine production projects and the associated brine production wells for the extraction of elements, minerals, mineral ions, salts, or other useful substances, including, but not limited to, lithium, lithium ions, lithium chloride, halogens or halogen salts, from a subsurface formation but not including oil, gas, or any product of oil or gas, as defined by Section 85.001 of the Natural Resources Code, or fluid oil and gas waste, as defined by Section 122.001 of the Natural Resources Code; and

(B) Class V spent brine return injection wells used in association with brine production projects for the reinjection of the spent brine.

(2) This section applies regardless of whether the well was initially completed for the purpose of brine production or Class V spent brine return injection or was initially completed for another purpose and is converted for brine production or Class V spent brine return injection.

(3) The operator of a brine production project, including associated brine production wells and Class V spent brine return injection wells, shall comply with the requirements of this section as well as with all other applicable Commission rules and orders.

(4) Any pipelines, flowlines, storage, or any other brine containers at the brine production project shall be constructed, operated, and maintained such that they will not leak or cause an unauthorized discharge to surface or subsurface waters.

(5) This section does not apply to Class III brine mining injection wells regulated under §3.81 of this title (relating to Class III Brine Mining Injection Wells).

(6) This section does not apply to the injection of fluids that meet the definition of a hazardous waste under 40 CFR Part 261.

(7) Subsection (d) of this section establishes statewide field rules for brine production fields including assignment of acreage, well spacing, and density provisions to promote the regular development of brine resources in a manner that does not damage the reservoir.

(8) If a provision of this section conflicts with any provision or term of a Commission order or permit, the provision of such order or permit controls, provided that the provision satisfies the minimum requirements for EPA's Class V Underground Injection Control (UIC) program.

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

(1) Affected person--A person who, as a result of activity sought to be permitted, has suffered, or faces a substantial risk of suffering, concrete or actual injury or economic damage other than as a member of the general public. A competitor is not an affected person unless it has suffered, or faces a substantial risk of suffering, actual harm to its interest in real property or waste of substantial recoverable substances.

(2) Application--The Commission form for applying for a permit, including any additions, revisions or modifications to the forms, and any required attachments.

(3) Aquifer--A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(4) Area of review (AOR)--The brine production project area plus a circumscribing area the width of which is one-quarter mile measured from the perimeter of the brine production project area.

(5) Brine--Saline water, whether contained in or removed from an aquifer, which may contain brine resources or other naturally-occurring substances. The term does not include brine produced as an incident to the production of oil and gas.

(6) Brine field--A formation or the correlative depth interval designated in the field designation or rules that contains brine resources.

(7) Brine production project--A project the purpose of which is the extraction of brine resources from a brine field. The term includes brine production wells, Class V spent brine return injection wells, monitoring wells, brine flowlines, and any equipment associated with the project.

(8) Brine production project area--The surface extent of the land assigned to a brine production project, as indicated on the plat required by subsection (e)(3)(N) of this section.

(9) Brine production project permit--A permit authorizing a brine production project issued by the Commission pursuant to this section.

(10) Brine production well--A well drilled or recompleted for the exploration or production of brine resources that is part of a brine production project.

(11) Brine resource--Elements, minerals, salts, or other useful substances dissolved or entrained in brine, including, but not limited to, lithium, lithium ions, lithium chloride, halogens, or other halogen salts, but not including oil, gas, or any product of oil or gas.

(12) Casing--A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling to support the sides of the hole and prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

(13) Cementing--The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind casing.

(14) Class V spent brine return injection well--A well into which brine produced by a brine production project is re-injected into the same brine field from which it was withdrawn after the brine resources have been extracted. The term does not include a Class I, II, III, IV, or VI UIC well.

(15) Code of Federal Regulations (CFR)--The codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

(16) Commission--The Railroad Commission of Texas acting through a majority of the Commissioners or through a Commission employee to whom the Commissioners have delegated authority.

(17) Confining zone--A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above or below the brine field.

(18) Contaminant--Any physical, chemical, biological, or radiological substance or matter in water.

(19) Corrective action--Methods to assure that wells within the area of review do not serve as conduits for the movement of fluids from the brine field and into or between USDWs, including the use of corrosion resistant materials where appropriate.

(20) Director--The Director of the Oil and Gas Division of the Railroad Commission of Texas or the Director's delegate.

(21) Electric log--A density, sonic, or resistivity (except dip meter) log run over the entire wellbore.

(22) EPA--The United States Environmental Protection Agency.

(23) Exempted aquifer--An aquifer or its portion that meets the criteria in the definition of USDW but which has been exempted according to the procedures in 40 CFR §144.7.

(24) Fault--A surface or zone of rock fracture along which there has been displacement.

(25) Flow rate--The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

(26) Fluid--Any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(27) Formation--A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(28) Formation fluid--Fluid present in a formation under natural conditions as opposed to introduced fluids such as drilling mud.

(29) Fracture pressure--The pressure that, if applied to a subsurface formation, would cause that formation to physically fracture or result in initiation or propagation of fractures.

(30) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in an estate that includes the brine resources sought to be extracted through a brine production well.

(31) Injection well--A well into which fluids are being injected.

(32) Interested person--Any person who expresses an interest in an application, permit, or Class V spent brine return injection well.

(33) Limited English-speaking household--A household in which all members 14 years and older have at least some difficulty with English.

(34) Lithology--The description of rocks on the basis of their physical and chemical characteristics.

(35) Mechanical integrity--A Class V spent brine return injection well has mechanical integrity if:

(A) there is no significant leak in the casing, tubing, or packer (internal mechanical integrity); and

(B) there is no significant fluid movement into a USDW through channels adjacent to the injection well bore as a result of operation of the injection well (external mechanical integrity).

(36) Operator-- A person, acting for itself or as an agent for others and designated to the Commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the Commission.

(37) Owner--The owner of any facility or activity subject to regulation under the UIC program.

(38) Packer--A device lowered into a well to produce a fluid-tight seal.

(39) Person--A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(40) Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(41) Plugging record--A systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells. The listing may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

(42) Pollution--The alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(43) Pressure--The total load or force per unit area acting on a surface.

(44) Schedule of compliance--A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the applicable statutes and regulations.

(45) Spent brine--Brine produced from a brine production well from which brine resources have been extracted. Spent brine may include non-hazardous process water and other additives used to facilitate brine resource extraction or reinjection.

(46) Surface casing--The first string of well casing to be installed in the well.

(47) Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

(48) Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move beyond the confining zone.

(49) Underground injection--Well injection.

(50) UIC--Underground injection control.

(51) UIC Program--The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program" as defined in 40 CFR §144.3.

(52) Underground source of drinking water (USDW)-- An aquifer or its portion which is not an exempted aquifer and which:

(A) supplies any public water system; or

(B) contains a sufficient quantity of ground water to supply a public water system and either:

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 milligrams per liter total dissolved solids.

(53) Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension.

(54) Well injection--The subsurface emplacement of fluids through a well.

(55) Well plug--A watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

(56) Workover--An operation in which a down-hole component of a well is repaired or the engineering design of the well is changed. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this section, workovers do not include well stimulation operations.

(c) General requirements.

(1) A brine production project and all associated brine production wells and Class V spent brine return injection wells shall be permitted in accordance with the requirements of this section. No person may construct or operate such wells without a permit under this section.

(2) Applications and reports shall be signed in accordance with this paragraph.

(A) Applications. All applications shall be signed as follows:

(i) for a corporation, by a responsible corporate officer. A responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or

(ii) for a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

(B) Reports. All reports required by permits and other information requested by the Commission shall be signed by a person described in subparagraph (A) of this paragraph or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) the authorization is made in writing by a person described in subparagraph (A) of this paragraph;

(ii) the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility; and

(iii) the authorization is submitted to the Commission before or together with any report of information signed by the authorized representative.

(C) Certification. Any person signing a document under subparagraph (A) or (B) of this paragraph shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or who are directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

(3) Operators of all Class V spent brine return injection wells shall re-inject spent brine into the brine field from which the brine was produced.

(4) All brine production wells and Class V spent brine return injection wells shall be drilled and completed or recompleted, operated, maintained, and plugged in accordance with the requirements of this section and the brine production project permit.

(5) The Commission shall assign each brine production project a Commission lease number. All brine project operators shall ascertain from the appropriate schedule the lease number assigned to each separate brine production project, and thereafter include on each Commission-required form or report the exact brine production project name and its assigned number as they appear on the current schedule for all leases.

(6) An applicant for or permittee of a brine production project and associated wells shall comply with the requirements of this chapter, including but not limited to:

(A) §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements);

(B) §3.5 of this title (relating to Application To Drill, Deepen, Reenter, or Plug Back);

(C) §3.11 of this title (relating to Inclination and Directional Surveys Required);

(D) §3.12 of this title (relating to Directional Survey Company Report);

(E) §3.16 of this title (relating to Log and Completion or Plugging Reports)

(F) §3.17 of this title (relating to Pressure on Bradenhead)

(G) §3.18 of this title (relating to Mud Circulation Required);

(H) §3.19 of this title (relating to Density of Mud-Fluid);

(I) §3.36 of this title (relating to Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas); and

(J) §3.80 of this title (relating to Commission Oil and Gas Forms, Applications, and Filing Requirements).

(7) In addition to the requirements of §3.13 of this title (relating to Casing, Cementing, Drilling, Well Control, and Completion Requirements), all wells associated with a brine production project shall use casing and cement designed to withstand the anticipated pressurization and formation fluids that are capable of negatively impacting the integrity of casing and/or cement such that it presents a threat to USDWs or oil, gas, or geothermal resources.

(8) All operators of wells drilled and operated in association with a brine production project shall comply with the requirements of §3.14 of this title (relating to Plugging), §3.15 (relating to Surface Equipment Removal Requirements and Inactive Wells), and §3.35 (relating to Procedures for Identification and Control of Wellbores in Which Certain Logging Tools Have Been Abandoned), except that the operator shall plug all wells associated with a brine production project and remove all wastes, storage vessels, and equipment from the site within one year of cessation of brine production project operations.

(9) All operators of wells drilled and operated in association with a brine production project shall comply with the requirements of §3.78 of this title (relating to Fees and Financial Security Requirements), as the requirements are applicable to brine production projects, except that, prior to spudding, the operator shall provide financial security in an amount estimated to plug each well in the brine production project after cessation of brine production project operations. Notwithstanding the provisions of §3.78(i) of this title, for an operator of a brine production project who has satisfied its financial security requirements by filing a cash deposit, the Commission shall refund to the operator the amount estimated to plug each well following its plugging if the amount of the deposit remaining after the refund would be sufficient to plug all remaining wells in the brine production project.

(10) No person may knowingly make any false statement, representation, or certification in any application, report, record, or other document submitted or required to be maintained under this section or under any permit issued pursuant to this section, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this section or under any permit issued pursuant to this section.

(d) Spacing, acreage, density and field rules; exceptions.

(1) Spacing. All brine production wells and Class V spent brine return injection wells shall be completed within the brine production project area and no less than one-half mile from the boundary of the brine production project area and no less than one-half mile from any interest within the brine production project area that is not participating in the project, unless special field rules provide different spacing requirements or the applicant obtains an exception to this paragraph pursuant to paragraph (4) of this subsection.

(2) Acreage and density.

(A) An applicant for a brine production project permit shall designate and assign to the project acreage within the applicable brine field and indicate the total number of acres in the permit application required by subsection (e)(3) of this section. The minimum acreage is 1,280 acres per brine production well included in the brine production project unless special field rules provide different well density requirements or the applicant obtains an exception to this paragraph pursuant to paragraph (4) of this subsection.

(B) Upon completion of a brine production well in a brine production project area and filing the completion report with the Commission, the applicant may elect to file a plat assigning acreage in the brine production project area to the brine production well; however, the applicant is not required to assign acreage to an individual brine production well, provided the total number of acres assigned to the

brine production project area divided by the total number of brine production wells equals or exceeds 1,280 acres, unless special field rules provide different well density requirements or the applicant obtains an exception to the density requirements pursuant to paragraph (4) of this subsection.

(C) An applicant shall not assign more than 5,120 acres in a brine field to a brine production well unless special field rules provide for different limits.

(D) If the operator elects to file a plat assigning acreage to a brine production well, the two farthermost points of acreage assigned to the well shall not exceed 23,760 feet unless special field rules provide for a different limit, and the acreage assigned shall include all productive portions of the wellbore.

(E) Multiple assignment of the same acreage in a brine field to more than one brine production well is not permitted. However, this limitation shall not prevent the reformation of brine production projects so long as:

(i) no multiple assignment of acreage occurs; and

(ii) such reformation does not violate other regulations.

(F) The acreage included in a brine production project area shall consist of acreage for which the operator has a good faith claim to produce brine resources.

(i) Non-contiguous acreage included in the same brine production project area may not be separated by greater than the minimum spacing distance for wells provided by paragraph (1) of this subsection, as altered by any applicable special field rules.

(ii) An operator may obtain an exception to the contiguity requirements of clause (i) of this subparagraph pursuant to paragraph (4)(C) of this subsection.

(G) The acreage limits provided by this paragraph are the minimum and maximum amounts of acreage in a brine field that may be assigned to an individual well at the operator's election and shall not be construed as a limit on the sizes of either a brine production project area or a pooled unit for production of brine resources.

(3) Brine field designation and field rules.

(A) Application for new brine field designation. A new brine field designation may be made by the Commission after a hearing after notice to all operators of brine production wells within five miles of the brine discovery well. The applicant shall provide proper evidence proving that a well is completed in a new field.

(i) The applicant shall submit a legible area map, drawn to scale, which shows the following:

(I) all oil, gas, brine production, and abandoned wells within at least a five-mile radius of the brine well claimed to be a discovery well;

(II) the producing intervals of all wells identified in subclause (I) of this clause;

(III) all Commission-recognized fields within a two and one-half mile radius of the brine well claimed to be a discovery well identified by Commission-assigned field names, names of the producing formations, and approximate average depth of the producing interval;

(IV) the total depth of all wells identified in subclause (I) of this clause that penetrated the top of the proposed new field; and

(V) scale, legend, and name of person who prepared the map.

(ii) The applicant shall submit a list of the names and addresses of all operators of wells within five miles of the brine discovery well.

(iii) The applicant shall submit a complete electric log of the brine well. Any electric log filed shall be considered public information pursuant to §3.16 of this title.

(iv) The applicant shall submit a bottom-hole pressure for brine production wells submitted on the appropriate form. This bottom-hole pressure may be determined by a pressure build-up test, drill stem test, or wire-line formation tester. Calculations based on fluid level surveys or calculations made on flowing wells using shut-in wellhead pressures may be used if no test data is available.

(v) The applicant shall submit a subsurface structure map and/or cross sections, if separation is based on structural differences, including faulting and pinch-outs. The structure map shall show the contour of the top of the brine field and the lines of cross section. The cross sections shall be prepared from comparable electric logs (not tracings) with the wells, producing formation, and brine field identified. The engineer or geologist who prepared the map and cross section shall sign and seal them.

(vi) The applicant shall submit reservoir pressure measurements or calculations, if separation is based on pressure differentials.

(vii) The applicant shall submit core data, drillstem test data, cross sections of nearby wells, and/or production data estimating the fluid level, if separation is based on differences in fluid levels. The applicant shall obtain the fluid level data within 10 days of the potential test date.

(viii) The applicant shall submit evidence that demonstrates that the new brine field is effectively separated from any other brine field or oil or gas field previously shown to be commercially productive.

(B) Temporary brine field rules.

(i) The Commission will accept applications for temporary brine field rule hearings for brine fields after the first well has been completed in a brine field.

(ii) When requesting such hearings, the applicant shall furnish the Commission with a list of the names and addresses of all operators of wells within five miles of the brine discovery well.

(iii) At the hearing on the adoption of temporary brine field rules, the applicant bears the burden of establishing that each of the proposed temporary brine field rules is reasonably expected to protect freshwater resources, protect correlative rights, prevent waste of recoverable brine resources, and promote the production of additional brine resources in an orderly and efficient manner.

(iv) Temporary brine field rules shall remain effective until:

(I) 18 months after adoption; or

(II) permanent brine field rules are adopted.

(C) Permanent brine field rules.

(i) After temporary brine field rules have been effective in a brine field for at least 12 months, the operator of a brine production well in the brine field subject to temporary brine field rules or

the Commission may request a hearing to adopt permanent brine field rules for the brine field in which the operator's well is located.

(ii) An operator requesting a hearing to adopt permanent brine field rules shall furnish the Commission a list of all operators within five miles of the brine discovery well.

(iii) If permanent field rules are not adopted, temporary field rules adopted under subparagraph (B) of this paragraph expire after 18 months and the statewide field requirements of this section apply to operations within the applicable brine field.

(4) Exceptions to spacing, density, and contiguity requirements.

(A) An exception to paragraph (1) of this subsection or paragraph (2)(A) - (C) of this subsection may be granted after a public hearing held after notice to all persons described in subparagraph (B) of this paragraph. An exception to paragraph (2)(F) of this subsection may be granted after a public hearing held after notice to all persons described in subparagraph (C) of this paragraph. At a hearing on an exception, the burden shall be on the applicant to establish that an exception to this section is necessary either to prevent waste or to protect correlative rights.

(B) In addition to the notice required under subsection (f) of this section, an applicant seeking an exception to the spacing or density requirements shall file with its application the names and mailing addresses of the following persons for tracts within the minimum spacing distance for the proposed well and the brine field:

(i) the designated operator;

(ii) all lessees of record for tracts with no designated operator; and

(iii) all owners of record of unleased mineral interests.

(C) In addition to the notice required under subsection (f) of this section, an applicant seeking an exception to the contiguity requirements of paragraph (2)(F) of this subsection shall file with its application the names and mailing addresses of the following persons for tracts located between the non-contiguous portions of its proposed project area that are farther apart than the minimum spacing distance for wells in the brine field:

(i) the designated operator;

(ii) all lessees of record for tracts with no designated operator; and

(iii) all owners of record of unleased mineral interests.

(D) If, after diligent efforts, the applicant is unable to ascertain the name and address of one or more persons required by this paragraph to be notified, then the applicant shall notify such persons by publishing notice of the application in a form approved by the Commission. The applicant shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which the brine production project well will be located. The first publication shall be published at least 14 days before the protest deadline in the notice of application.

(e) Brine production project permit application.

(1) Any person who proposes to operate a brine production project shall submit to the Director an application for a brine production project permit. The application shall be made under this section or under special field rules governing the particular brine field, or as an exception thereto, and filed with the Commission on a form approved by the Commission.

(2) An application for a brine production project permit shall be accompanied by an application for at least one injection well and shall include the information required by paragraph (3) of this subsection, as applicable. The applicant is not required to submit permit applications for the other individual brine production and Class V spent brine return injection wells at the time the applicant submits its application for a brine production project permit. Unless otherwise specified in the brine production project permit, once the brine production project permit has been issued, the operator may operate additional brine production wells and Class V spent brine return injection wells as part of the brine production project. The operator shall obtain permits for those wells prior to commencing operations. Requirements for obtaining a Class V spent brine return injection well permit are specified in paragraph (4) of this subsection. Notice in addition to the notice required for the brine production project by subsection (f) of this section is not required for the individual wells unless the operator requests an exception to the spacing, density, or acreage requirements or additional notice is required by the permit.

(3) An application for a brine production project permit shall comply with the requirements of this paragraph.

(A) The application shall include the name, mailing address, and physical location of the brine production project for which the application is submitted.

(B) The application shall include the applicant's name, mailing address, telephone number, P-5 Organization Report number, and a statement indicating whether the applicant operator is the owner of the facility.

(C) The application shall specify the proposed use or uses for the brine produced by the project.

(D) The application shall specify the estimated maximum number of brine production wells and Class V spent brine return injection wells that will be operated within the brine production project.

(E) The application shall designate the total number of acres included in the proposed brine production project area, which shall equal not less than 1,280 acres per brine production well unless special field rules provide otherwise.

(F) The application shall specify the brine field from which the brine will be produced and spent brine reinjected, including the top and bottom depths of the field throughout the area of review.

(G) The application shall include complete electric logs of representative brine production wells and Class V spent brine return injection wells or complete electric logs of representative nearby wells. On the logs, the applicant shall identify and indicate the depths of the geologic formations between the land surface and the top of the brine field.

(H) The application shall include wellbore diagrams showing the completions that will be used for brine production wells and Class V spent brine return injection wells, including casing and liner sizes and depths and a statement indicating that such wells will be drilled, cased, cemented, and completed in accordance with the requirements of §3.13 of this title as those requirements may be revised by this section. The statement shall also include information to demonstrate that the casing and cement used in the completion of each brine production well and each Class V spent brine return injection well is designed to withstand the anticipated pressurization and formation fluids that are capable of negatively impacting the integrity of casing and/or cement such that it presents a threat to

USDWs or oil, gas, or geothermal resources. The wellbore diagrams shall show the proposed arrangement of the downhole well equipment and specifications of the downhole well equipment. A single wellbore diagram may be submitted for multiple wells that have the same configuration, provided that each well with that type of configuration is identified on the wellbore diagram and the diagram identifies the deepest cement top for each string of casing among all the wells covered by that diagram.

(I) The application shall include information to characterize the brine field from which the brine will be produced and into which the spent brine will be reinjected, including the following:

(i) an isopach map showing thickness and areal extent of the brine field;

(ii) lithology, grain mineralogy, and matrix cementing of the brine field;

(iii) effective porosity of the brine field and the method used to determine effective porosity;

(iv) vertical and horizontal permeability of the brine field and the method used to determine permeability;

(v) the occurrence and extent of natural fractures and solution features within the brine production project;

(vi) chemical and physical characteristics of the fluids contained in the brine field that may potentially impact casing or cement;

(vii) the bottom hole temperature and pressure of the brine field;

(viii) formation fracture pressure of the brine field, the method used to determine fracture pressure and the expected direction of fracture propagation. Calculations demonstrating injection of spent brine into the proposed brine field shall not exceed the fracture pressure gradient and information showing injection into the brine field will not initiate fractures through the confining zone;

(ix) a description of the proposed well stimulation program, if applicable, including a description of the stimulation fluids, and a determination that the well stimulation will not compromise containment of the brine field;

(x) the vertical distance separating the top of the brine field from the base of the lowest USDW;

(xi) a demonstration, such as geologic maps and cross-sections, that the brine field into which the spent brine will be injected is the same formation from which the brine will be produced; and

(xii) any other information necessary to characterize the brine field.

(J) The application shall include information to characterize the proposed confining zone, including the following:

(i) the geological name and the top and bottom depths of the formation making up the confining zone;

(ii) an isopach map showing thickness and areal extent of the confining zone;

(iii) lithology, grain mineralogy, and matrix cementing of the confining zone;

(iv) the vertical distance separating the top of the confining zone from the base of the lowest USDW; and

(v) any other information necessary to characterize the confining zone.

(K) The application shall include the proposed operating data, including the following:

(i) the maximum daily brine production rate;

(ii) the maximum daily injection rate and maximum injection pressure; and

(iii) the proposed test procedure to be used to determine mechanical integrity of the Class V spent brine return injection wells.

(L) The application shall include a letter from the Geologic Advisory Unit of the Commission's Oil and Gas Division stating that the use of the brine field for the injection of spent brine will not endanger usable quality water or USDWs.

(M) The application shall include an accurate plat with surveys of a scale sufficient to legibly show the entire extent of the area of review. The plat shall include the following:

(i) the area of review outlined on the plat using either a heavy line or crosshatching;

(ii) the location, to the extent anticipated at the time of the application, of each well within the brine production project area that the applicant intends to use for the brine production project including each existing well that may be converted to brine production or Class V spent brine return injection, each well the applicant intends to drill for brine production, each well the applicant intends to drill for project monitoring, and each Class V spent brine return injection well. If the wells are horizontal or deviated wells, the plat shall include the surface location of the proposed drilling site, penetration point, perforated casing or open hole through which brine will be produced or reinjected, terminus location, and a line showing the distance in feet from the perimeter of the area of review to the nearest point of extraction or injection on the lateral leg of the horizontal well;

(iii) the type, location, and depth of all wells of public record within the area of review that penetrate the top of the brine field. The applicant shall include the following information with the map:

(I) a tabulation of the wells showing the dates the wells were drilled and the current status of the wells;

(II) completion records for all wells and plugging records for plugged and abandoned wells; and

(III) a corrective action plan for any known wells in the area of review that penetrate the brine field and that may allow fluid migration into USDWs from the brine field for which the applicant cannot demonstrate proper completion, plugging, or abandonment. The Director may approve a phased corrective action plan;

(iv) the geographic location information of the wells, including the Latitude/Longitude decimal degree coordinates in the WGS 84 coordinate system, a labeled scale bar, and indication of the northerly direction; and

(v) a certification by a person knowledgeable of the facts pertinent to the application that the plat is accurately drawn to scale and correctly reflects all pertinent and required data.

(N) The application shall include a plat showing:

(i) the outline of the brine production project area;

(ii) the operators of tracts in the brine production project area and tracts within the area of review;

(iii) owners of all leases of record for tracts that have no designated operator in the brine production project area and tracts within the area of review;

(iv) owners of record of unleased mineral interests within the brine field for tracts in the brine production project area and tracts within the area of review;

(v) surface owners of tracts in the brine production project area and within the area of review; and

(vi) the names and addresses of all persons listed in clause (ii) through (v) of this subparagraph. If the names and addresses of the persons in clause (ii) through (v) of this subparagraph cannot be included on the plat, the applicant shall include the names and addresses on a separate sheet attached to the plat. The applicant shall determine the names and addresses of the surface owners from the current county tax rolls or other reliable sources and shall identify the source of the list. If the Director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more surface owners, the Director may waive the requirements of this subparagraph with respect to those surface owners.

(O) The application shall include a subsurface structure map and/or cross sections, including faulting and pinch-outs. The structure map shall show the contour of the top of the brine field and the lines of cross section. The cross sections shall be prepared from comparable electric logs (not tracings) and shall identify the wells, brine field, and any hydrocarbon reservoir.

(P) The application shall include a printed copy or screenshot showing the results of a survey of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed injection well location.

(Q) The application shall include a certification that the applicant has a good faith claim to produce the brine resources for the tracts included in the brine production project area.

(R) The application shall include a proposed plugging and abandonment plan.

(S) The applicant shall ensure that, if required under Texas Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, the geologic and hydrologic evaluations required under this section are conducted by a licensed professional engineer or geoscientist who shall affix the appropriate seal on the resulting report of such evaluations.

(T) The application shall include any other information the Director may reasonably require to enable the Commission to determine whether to issue a permit for the brine production project, including the associated brine production wells and Class V spent brine return injection wells.

(4) Prior to commencement of injection operations into any Class V spent brine return injection well within the brine production project area, the operator shall file an application for an individual well permit with the Commission in Austin. The individual well permit application shall include the following:

(A) the well identification and, for a new well, a location plat;

(B) the location of any well drilled within one-quarter mile of the injection well after the date of application for the brine production project permit and the status of any well located within one-quarter mile of the injection well that has been abandoned since the date the brine production project permit was issued, including the plugging date if such well has been plugged;

(C) a description of the well configuration, including casing and liner sizes and setting depths, the type and amount of cement used to cement each casing string, depth of cement tops, and tubing and packer setting depths;

(D) a description of any additives used in the brine production project and reinjected with the spent brine into the Class V spent brine return well;

(E) an application fee in the amount of $100 per well; and

(F) any other information required by the brine production project permit.

(5) Criteria for exempted aquifers. An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" may be determined under 40 CFR §144.7 to be an "exempted aquifer" if it meets the criteria in paragraphs (a) through (c) of 40 CFR §146.4. The Commission adopts 40 CFR §144.7 and §146.4 by reference, effective January 6, 2025.

(6) All individual Class V spent brine return injection wells covered by a brine production project permit shall be completed, operated, maintained, and plugged in accordance with the requirements of subsection (j) of this section and the brine production project permit.

(f) Notice and hearing.

(1) Notice to certain communities. The applicant shall identify whether any portion of the AOR encompasses an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. If the AOR incudes an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities, including a public meeting. Efforts to include EJ and Limited English-Speaking Household communities in public involvement activities in such cases shall include:

(A) published meeting notice in English and the identified language (e.g., Spanish);

(B) comment forms posted on the applicant's webpage and available at the public meeting in English and the identified language;

(C) interpretation services accommodated upon request;

(D) English translation of any comments made during any comment period in the identified language; and

(E) to the extent possible, public meeting venues near public transportation.

(2) Notice. The applicant for a brine production project permit shall give notice of the application as follows.

(A) Persons to notify. The applicant for a brine production project permit shall notify:

(i) operators on tracts within the area of review;

(ii) owners of all leases of record for tracts that have no designated operator within the area of review;

(iii) owners of record of unleased mineral interests within the area of review and within the brine field;

(iv) all surface owners identified on the plat described in subsection (e)(3)(N)(ii) of this section;

(v) the city clerk or other appropriate city official of a city for which any portion falls within the area of review;

(vi) the county clerk of any county or counties for which any portion falls within the area of review; and

(vii) any other person designated by the Director.

(B) Method of notice.

(i) The applicant for a brine production project permit shall mail or deliver to persons listed in subparagraph (A) of this paragraph notice of the brine production project permit application in a form approved by the Commission. The applicant shall provide notice after staff determines than an application is complete pursuant to subsection (g)(1) of this section.

(ii) The applicant shall publish notice of the brine production project permit application in a form approved by the Commission. The applicant shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation of any county or counties for which any portion falls within the area of review. The first notice shall be published at least 14 days before the protest deadline in the notice of application. The applicant shall file with the Commission a publisher's affidavit or other evidence of publication.

(C) Contents of notice. The notice shall be made using the form prescribed by the Commission, which shall include the following information:

(i) the county or counties within which the brine production project area of review is located;

(ii) a copy of the plat required by subsection (e)(3)(M) of this section;

(iii) the name of the brine field;

(iv) the depth to the top of the brine field;

(v) the proposed life of the brine production project; and

(vi) a statement that an affected person may file a protest within 30 days of the date of the notice and any interested person may submit comments to the Commission within 30 days of the date of the notice.

(D) Notice of Class V spent brine return injection wells. Once an applicant complies with the notice required to obtain a brine production project permit and the permit has been issued, no notice shall be required when filing an application for an individual injection well permit for any Class V spent brine return injection well covered by the brine production permit unless otherwise provided in the permit.

(E) Notice of brine production well. Once an applicant complies with the notice required to obtain a brine production permit and the permit has been issued, no notice shall be required when filing an application for an individual brine production well permit for any brine production well covered by the brine production permit unless otherwise provided in the permit or unless an exception is requested.

(3) Comments, protests, and requests for hearing. Notice of an application will allow at least 30 days for public comment. Beginning on the date of the notice, any affected person has 30 days to protest the application, and any interested person has 30 days to submit written comments.

(4) Hearings.

(A) The Commission shall hold a hearing when:

(i) the Commission receives a written protest from an affected person within 30 days after notice of the application is given in accordance with this subsection;

(ii) the Director denies the application and the operator requests a hearing within 30 days of the notice of administrative denial;

(iii) the Director issues the permit and the operator requests a hearing to contest certain permit conditions; or

(iv) the Director determines that a hearing is in the public interest.

(B) Notice of a hearing will be given at least 30 days before the hearing. The public comment period under paragraph (3) of this subsection will automatically be extended to the close of any hearing under this paragraph.

(C) At any hearing, the burden shall be on the applicant.

(D) After hearing, the administrative law judge and technical examiner shall recommend final Commission action.

(g) Commission action on permit applications.

(1) Permitting procedures.

(A) Initial permit application review. Upon receipt of an application for a permit, the Director will review the application for completeness. Within 30 days after receipt of the application, the Director will notify the applicant in writing whether the application is complete or deficient. A notice of deficiency will state the additional information necessary to complete the application, and a date for submitting this information. The application will be deemed withdrawn if the necessary information is not received by the specified date, unless the Director has extended this date upon request of the applicant. Upon timely receipt of the necessary information, the Director will notify the applicant that the application is complete. The Director will not begin processing a permit until the application is complete.

(B) Administrative action on application. When no timely protest is received from an affected person, the Director may administratively grant an application for a brine production project permit, including the associated wells, if the applicant provides sufficient evidence to demonstrate that the brine production project will not endanger USDWs or human health or the environment.

(2) Application for an amended permit. The permittee shall file an application to amend a brine production project permit if the permittee wishes to make substantial changes such as change the exterior boundaries of, or maximum number of wells authorized in, the brine production project area or alter permit conditions.

(3) Permit application denial. If the Director administratively denies a permit application, a notice of administrative denial will be mailed to the applicant. The applicant will have a right to a hearing on request. At any such hearing, the burden shall be on the applicant. After hearing, the administrative law judge and technical examiner shall recommend final Commission action.

(h) Modification, revocation and reissuance, and termination of permits. A permit may be modified, revoked and reissued, or terminated by the Commission either upon the written request of the operator or upon the Commission's initiative, but only for the reasons and under the conditions specified in this subsection. Except for minor modifications made under paragraph (2) of this subsection, the Commission will follow the applicable procedures in paragraph (1) of this subsection. In the case of a modification, the Commission may request additional in-

formation or an updated application. In the case of a revocation and reissuance, the Commission will require a new application. If a permit is modified, only the conditions subject to modification are reopened. The term of a permit may not be extended by modification. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, and the permit is reissued for a new term.

(1) Modification, or revocation and reissuance. The following are causes for modification, or revocation and reissuance:

(A) when material and substantial alterations or additions to the facility occur after permit issuance and justify permit conditions that are different or absent in the existing permit;

(B) the Commission receives new information;

(C) the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued;

(D) the Commission determines good cause exists for modifying a compliance schedule, such as an act of God, strike, flood, materials shortage, or other event over which the operator has little or no control and for which there is no reasonably available remedy;

(E) cause exists for terminating a permit under paragraph (3) of this subsection, and the Commission determines that modification, or revocation and reissuance, is appropriate; or

(F) a transfer of the permit is proposed.

(2) Minor modifications. With the permittee's consent, the Director may make minor modifications to a permit administratively, without following the procedures of paragraph (1) of this subsection. Minor modifications may only:

(A) correct clerical or typographical errors, or clarify any description or provision in the permit, provided that the description or provision is not changed substantively;

(B) require more frequent monitoring or reporting;

(C) change construction requirements provided that any changes shall comply with the requirements of subsection (j)(4) of this section; or

(D) allow a transfer of the permit where the Director determines that no change in the permit is necessary other than a change in the name of the permittee, provided that a written agreement between the current permittee and the new permittee containing a specific data for the transfer of permit responsibility, coverage, and liability has been submitted to the Commission.

(3) Termination. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(A) the permittee fails to comply with any condition of the permit or this section;

(B) the permittee fails to disclose fully all relevant facts in the permit application or during the permit issuance process, or misrepresents any relevant fact at any time;

(C) a material change of conditions occurs in the operation or completion of the well, or there are material changes in the information originally furnished; or

(D) the Commission determines that the permitted injection endangers human health or the environment, or that pollution of USDWs is occurring or is likely to occur as a result of the permitted injection.

(4) Duty to provide information. The permittee shall also furnish to the Commission, within a time specified by the Commission, any information that the Commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Commission, upon request, copies of records required to be kept under the conditions of the permit.

(i) Permit conditions.

(1) Access by Commission. The permittee shall allow any member or employee of the Commission, on proper identification, to:

(A) enter upon the premises where a regulated activity is conducted or where records are kept under the conditions of the permit;

(B) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(C) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(D) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code, §91.1012.

(2) Commission testing. The Commission may make any tests on any well at any time necessary for regulation of wells under this section, and the operator of such wells shall comply with any directives of the Commission to make such tests in a proper manner.

(3) Duty to comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

(4) Need to halt or reduce activity not a defense. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(5) Duty to mitigate. The permittee shall take all reasonable steps to minimize and correct any adverse effect on the environment resulting from noncompliance with the permit.

(6) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate permittee staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up and auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(7) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege. However, a valid permit is a property interest that may not be modified, suspended, or revoked without due process of law.

(8) Financial assurance. The permit shall require the permittee to maintain financial responsibility and resources to plug and abandon all brine mining production wells and Class V spent brine return injection wells and to remove all wastes, storage vessels, and equipment from the site within one year of cessation of brine production operations. The permittee shall show evidence of such financial

responsibility to the Director in accordance with the requirements of §3.78 of this title by submitting a cash deposit, performance bond, or letter of credit in a form prescribed by the Commission. Such bond or letter of credit shall be maintained until the well is plugged in accordance with paragraph (16) of this subsection.

(9) Duration. A permit issued under this section is effective for the duration of the brine production project. The Commission will review each permit issued pursuant to this section at least once every five years to determine whether just cause exists for modification, revocation and reissuance, or termination of the permit. The Commission may modify, revoke and reissue, or terminate a permit for just cause only after notice and opportunity for a hearing.

(10) Transfers. A brine production project permit is not transferable to any person except by modification, or revocation and reissuance of the permit to change the name of the permittee and incorporate other necessary requirements associated with the permittee name change.

(11) Permit renewal. Any person who has obtained a permit under this section and who wishes to continue to operate the brine production project and brine production wells after the permit expires shall file an application for a new permit at least 180 days before the existing permit expires, unless a later date has been authorized by the Director.

(12) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(13) Compliance with permit. All brine production wells and Class V spent brine return injection wells shall be drilled, converted, completed, operated, or maintained in accordance with the brine production project permit.

(14) Monitoring and records.

(A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for at least three years from the date of the sample, measurement, report, or application. This period may be extended by the Commission at any time.

(C) Records of monitoring information shall include the date, exact place, and time of the sampling or measurements; the individuals who performed the sampling or measurements; the dates analyses were performed; the individuals who performed the analyses; the analytical techniques or methods used; and the results of the analyses.

(15) Reporting and record retention.

(A) The permittee shall submit to the Director, within the time specified by the Director, any information that the Director may reasonably request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept under the conditions of the permit.

(B) The permittee shall retain records of all information required by the permit for at least five years from the date of commencement of brine production. This period may be extended by request of the Commission at any time.

(C) The permittee shall file a report of the volumes of brine, oil, and gas produced by each brine production well during the preceding month. The report shall be filed with the Commission by the 15th calendar day of the month following the period covered by the report.

(D) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of a well associated with a brine production project.

(E) The permittee shall report to the Commission any noncompliance, including any spills or leaks from brine receptacles or pipelines, that may cause waste or confiscation of property or endanger surface or subsurface water, human health or the environment.

(i) An oral report shall be made to the appropriate district office immediately after the permittee becomes aware of the noncompliance.

(ii) A written report shall be filed with the Director and the appropriate district office within five days of the time the permittee becomes aware of the noncompliance. The written report shall contain the following information:

(I) a description of the noncompliance and its cause;

(II) the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(III) steps planned or taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(F) If the permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or a report to the Commission, the permittee shall promptly submit the relevant facts or correct information.

(16) Plugging. The operator of a brine production project shall plug all wells associated with the brine production project in accordance with the provisions of §3.14 of this title, except that the well shall be plugged within one year after cessation of the brine production project. For good cause, the Director may grant a reasonable extension of time in which to plug the wells if the operator submits a proposal that describes actions or procedures to ensure that the wells will not endanger USDWs during the period of the extension.

(17) Identification. Each property that produces brine resources and each well associated with a brine production project and tank shall at all times be clearly identified as follows.

(A) A sign shall be posted at the principal entrance to each such property which shall show the name by which the property is commonly known and is carried on the records of the Commission, the name of the permittee, and the number of acres in the property.

(B) A sign shall be posted at each well site which shall show the name of the property, the name of the permittee, and the well number.

(C) A sign shall be posted at or painted on each tank that is located on or serving each property, which signs shall show, in addition to the information provided for in subparagraph (A) of this paragraph, the Commission lease number for the formation from which brine in the tank is produced.

(D) The signs and identification required by this section shall be in the English language, clearly legible, and in the case of the

signs required by subparagraphs (A), (B), and (C) of this paragraph shall be in letters and numbers at least one inch in height.

(18) Dikes or fire walls. Dikes or fire walls shall be erected and maintained around all permanent tanks, or battery of tanks, that are:

(A) within the corporate limits of any city, town, or village;

(B) closer than 500 feet to any highway or inhabited dwelling;

(C) closer than 1,000 feet to any school or church; or

(D) so located as to be deemed by the Commission to be an objectionable hazard.

(19) Additional conditions. The Commission reserves the right to include additional permit conditions if it determines the conditions are necessary to ensure compliance with the requirements in this section and to prevent waste, prevent the confiscation of property, or prevent pollution.

(j) Additional permit conditions for Class V spent brine return injection wells. In addition to the conditions in subsection (i) of this section, Class V spent brine return injection wells shall be subject to the following.

(1) Unauthorized injection prohibited. No person may operate a Class V spent brine return injection well without obtaining a permit from the Commission under this section. No person may begin constructing a new Class V spent brine return injection well until the Commission has issued a permit to drill, deepen, plug back, or reenter the well under §3.5 of this title and a permit to operate the injection well under this section.

(2) Injected fluid restricted to brine field. No person may operate a Class V spent brine return injection well in a manner that allows fluids to escape into USDWs from the brine field from which it was produced. If fluids from a Class V spent brine return injection well are migrating out of the brine field into USDWs, the permittee shall immediately cease injection operations in the well or wells most proximate to the location where fluids have been detected in USDWs and perform the necessary corrective action or plug the injection well.

(3) Permit standards. No person may operate a Class V spent brine return injection well in a manner that allows fluid to escape from the permitted brine field or the movement of fluids containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. If injected fluids migrate into USDWs, or cause formation fluid to migrate into USDWs, the permittee shall immediately cease injection operations. All permits for Class V spent brine return injection wells issued under this section shall include the conditions required by this section and any other conditions reasonably necessary to prevent the pollution of USDWs.

(4) Construction requirements for Class V spent brine return injection wells. All Class V spent brine mining injection wells shall be drilled and completed or recompleted, operated, maintained, and plugged in accordance with the requirements of this section and the Class V spent brine return injection well permit.

(A) Permits shall specify drilling and construction requirements to assure that the injection operations shall not endanger USDWs. No changes to the construction of a well may be physically incorporated into the construction of the well prior to approval of the modifications by the Director.

(B) In addition to the casing and cementing requirements of §3.13 of this title, the operator shall:

(i) for all newly drilled Class V spent brine return injection wells, drill a sufficient depth into the brine field to ensure that when the well is logged prior to setting the long string the operator will be able to identify the top of the brine field and verify that the fluid will be injected only into the brine field;

(ii) set and cement surface casing from at least 100 feet below the lowermost base of usable quality water as defined by the Geologic Advisory Unit to the surface, regardless of the total depth of the well;

(iii) set and cement long string casing at a minimum from the top of the brine field to the surface unless the Director approves an alternate completion for good cause; and

(iv) determine the integrity of the cement by a cement bond log.

(C) In order to provide the Commission with an opportunity to witness the setting and cementing of the surface casing and production casing (long string) and running of cement bond logs, the operator shall provide at least 15 days' notice to the appropriate Commission district office.

(D) Appropriate logs and other tests shall be conducted during the drilling and construction of a Class V spent brine return injection well to verify the depth to the top of the brine field, adequacy of cement behind the casing strings, and injectivity and fracture pressure of the brine field. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each well shall be determined based on the depth, construction, and other characteristics of the well, the availability of similar data in the area, and the need for additional information that may arise as the construction of the well progresses.

(E) The well shall be equipped with tubing and packer set within 100 feet of the top of the brine field.

(F) The wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well.

(G) Injection operations may not begin in any new Class V spent brine return injection well until the operator has submitted a completion report to the Director, and the Director has reviewed the completion report and found the well to be in compliance with this section and the conditions of the permit.

(5) Operating requirements. Class V spent brine return injection well permits will prescribe operating requirements, which shall at a minimum specify the following.

(A) All Class V spent brine return injection shall be into the same brine field from which the brine was extracted by the brine production wells.

(B) All injection shall be through tubing set on a packer. The packer shall be set within 100 feet of the top of the permitted injection interval. The Director will consider granting exceptions to this requirement for good cause and when the proposed completion of the well would still result in the protection of underground sources of drinking water and confinement of injected fluids. For wells that are approved for casing injection, the operator shall perform a casing pressure test against a temporary packer/plug to demonstrate mechanical integrity of the long string casing.

(C) Except during well stimulation, injection pressure at the wellhead shall not exceed the maximum pressure calculated to assure that the injection pressure does not initiate new fractures or propagate existing fractures in the brine field and in no case may the injec-

tion pressure initiate fractures in the confining zone or cause the escape of injection or formation fluids from the brine field.

(D) The operator shall fill the annulus between the tubing and long string casing with a corrosion inhibiting fluid. All injection wells shall maintain an annulus pressure sufficient to indicate mechanical integrity unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs. The annulus pressure shall be monitored by a pressure chart or digital pressure gauge. The operator shall provide the Director with a written report and explanation of any change in annulus pressure that would indicate a leak or lack of mechanical integrity, such as an annulus pressure change exceeding 10%, within 15 days of detecting the change in pressure. An unsatisfactory explanation may result in a requirement that the well be tested for mechanical integrity.

(E) For each workover of an injection well, the operator shall notify the appropriate Commission district office at least 48 hours prior to the beginning of the workover or corrective maintenance operations that involve the removal of the tubing or well stimulation, and a mechanical integrity test shall be run on the well after the workover is completed if the packer is unseated during the workover.

(6) Corrective action. For all known wells in the area of review that penetrate the top of the brine field for which the operator cannot demonstrate proper completion, plugging, or abandonment, the Director will require corrective action if necessary to prevent movement of fluid into USDWs. Corrective action may be phased, if a phased corrective action plan has been approved by the Director.

(7) Mechanical integrity of Class V spent brine return injection wells.

(A) Mechanical integrity required. No person may perform injection operations in a Class V spent brine return injection well that lacks mechanical integrity. A well has mechanical integrity if:

(i) there is no significant leak in the casing (internal mechanical integrity); and

(ii) there is no significant fluid movement into a USDW through vertical channels adjacent to the wellbore (external mechanical integrity).

(B) Mechanical integrity shall be demonstrated to the satisfaction of the Director. In conducting and evaluating the results of a mechanical integrity test, the operator and the Director shall apply procedures and standards generally accepted in the industry. In reporting the results of a mechanical integrity test, the operator shall include a description of the method and procedures used. In evaluating the results, the Director will review monitoring and other test data submitted since the previous mechanical integrity test.

(C) Internal mechanical integrity. The permittee shall provide for a demonstration of internal mechanical integrity of the wellhead, casing, tubing, and annular seal assembly if present, using either a pressure test at a surface pressure of not less than 100 psig above the maximum expected operating surface pressure of the well or an equivalent test approved by the Director. The permittee shall provide a recording device to record the pressures measured during a mechanical integrity test.

(D) External mechanical integrity. The permittee shall use one of the following methods to demonstrate the absence of significant fluid movement into USDWs through vertical channels adjacent to the Class V spent brine return injection wellbore.

(i) the results of a temperature or noise log; or

(ii) where the nature of the casing precludes the use of the logging techniques prescribed in clause (i) of this subparagraph, cementing records demonstrating the presence of adequate cement to prevent such movement.

(E) Alternate methods. The Director may allow the use of a method of demonstrating mechanical integrity other than the methods listed in subparagraphs (C) and (D) of this paragraph with the approval of the administrator of EPA obtained pursuant to 40 CFR §146.8(d).

(F) Calibration of pressure gauges. A permittee shall calibrate all pressure gauges used in mechanical integrity demonstrations according to the manufacturer's recommendations. A copy of the calibration certificate shall be submitted to the Director at the time of demonstration and every time the gauge is calibrated. A pressure gauge shall have a resolution so as to allow detection of at least one-half of the maximum allowable pressure change.

(G) Timing of mechanical integrity testing.

(i) Both internal and external mechanical integrity shall be demonstrated before injection operations begin.

(ii) Internal mechanical integrity shall be demonstrated annually thereafter and after any workover that involves the removal of the tubing.

(iii) External mechanical integrity shall be demonstrated every five years.

(iv) The Director may require mechanical integrity testing if the Director has reason to believe that the well lacks mechanical integrity.

(H) Notice of testing.

(i) The permittee shall notify the appropriate Commission district office orally at least 48 hours before performance of a mechanical integrity test.

(ii) The permittee shall notify the Director in writing within 15 days of a failed mechanical integrity test. The notice shall indicate the permittee's plans for performing corrective action and re-testing the well or plugging the well.

(I) Reporting of testing. The permittee shall file a complete record of the test with the Commission in Austin within 30 days after the test. A copy of the pressure record shall accompany the report. The report shall include evaluation of the test results by a person qualified to provide such an evaluation. Reports of mechanical integrity demonstrations using downhole logs shall be accompanied by an interpretation of the log by a person qualified to make such interpretations.

(J) Failure to demonstrate mechanical integrity.

(i) A well shall maintain mechanical integrity. If the permittee or the Director finds that the well fails to demonstrate mechanical integrity during a test, fails to maintain mechanical integrity during operation, or that a loss of mechanical integrity is suspected during operation, the permittee shall halt injection immediately unless the Director allows continued injection because the permittee establishes that injection can continue without endangering USDWs. Report of the failure of mechanical integrity shall be made orally to the Director within 24 hours from the time the permittee becomes aware of the failure, and shall include an anticipated date for a mechanical integrity demonstration.

(ii) All wells that fail to pass a mechanical integrity test shall be repaired or plugged and abandoned within 90 days of the failure date. The 90-day timeline may be extended by the Director for

good cause. The well is to be shut-in immediately after failure to pass the mechanical integrity test and shall remain shut-in until it passes a mechanical integrity test or is plugged and abandoned.

(iii) If injection has ceased as provided by clause (i) of this subparagraph, then the permittee shall not resume injection until the well demonstrates mechanical integrity. A written plan to restore mechanical integrity shall be submitted to the Director within 15 days of the failure of mechanical integrity. The plan shall include a schedule and description of corrective action and a schedule for re-testing or plugging the well. The plan shall be approved by the Director and the Director may witness any mechanical integrity demonstration.

(K) Testing deviations. The Commission will consider any deviations during testing that cannot be explained by factors such as temperature fluctuations or by the margin of error for the test used to determine mechanical integrity to be an indication of the possibility of a significant leak and/or the possibility of significant fluid movement into a formation containing a USDW through channels adjacent to the injection wellbore.

(8) Monitoring and records.

(A) Monitoring requirements. Permits shall specify the following monitoring requirements:

(i) the proper use, maintenance, and installation of monitoring equipment or methods;

(ii) the type, intervals, and frequency of monitoring sufficient to yield data representative of the monitored activity, including continuous monitoring when appropriate;

(iii) the reporting of monitoring results with a frequency dependent on the nature and effect of the monitored activity, but in no case less than annually; and

(iv) any samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) Record retention. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Commission at any time.

(C) Monitoring record contents. Records of monitoring information shall include the date, exact place, and time of the sampling or measurements; the individuals who performed the sampling or measurements; the dates analyses were performed; the individuals who performed the analyses; the analytical techniques or methods used for the analyses; and the results of the analyses.

(D) Signatory requirements. All reports and other information submitted to the Commission shall be signed and certified in accordance with subsection (c)(2) of this section.

(E) Reporting requirements.

(i) The operator shall notify the Commission and obtain Commission approval in advance of any planned changes to the brine production project, including any physical alternation or addition to the project and any change that may result in non-compliance with permit conditions.

(ii) Monitoring results shall be reported at the intervals specified in the permit.

(iii) Reports of compliance or noncompliance with the requirements contained in any schedule of compliance shall be submitted no later than 30 days after each scheduled date.

(iv) The operator shall report to the Commission any noncompliance that may endanger USDWs, human health, or the environment.

(I) An oral report shall be made to the appropriate Commission district office immediately after the operator becomes aware of the noncompliance.

(II) A written report shall be filed with the Director within five days of the time the operator becomes aware of the noncompliance. The written report shall contain the following information:

(-a-) a description of the noncompliance and its cause;

(-b-) the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(-c-) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(v) Information that shall be reported under this subparagraph includes the following:

(I) any monitoring or any other information that indicates that any contaminant may endanger USDWs; and

(II) any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs.

(F) Reporting errors. If the operator becomes aware that it failed to submit any relevant facts or report any noncompliance, or that it submitted incorrect information in a permit application or a report to the Director, then the operator shall promptly submit the relevant facts, report of noncompliance, or correct information as applicable. A report of noncompliance shall contain the information listed in subparagraph (E) of this paragraph.

(9) Notice of workovers. The operator shall notify the appropriate Commission district office at least 48 hours before performing any workover or corrective maintenance operations that involve the unseating of the packer or well stimulation.

(10) Additional conditions. The Commission may establish additional conditions on a case-by-case basis as required to provide for and assure compliance with the requirements specified in this section.

(k) Violations; penalties.

(1) Any well drilled or operated in violation of this section without a permit issued under this section shall be plugged.

(2) Violations of this section may subject the operator to penalties and remedies specified in the Texas Water Code, Chapter 27, and the Natural Resources Code, Title 3.

(3) The certificate of compliance for a brine production well may be revoked in the manner provided in subsections §3.73(d)-(g), (i)-(k) of this title (relating to Pipeline Connection; Cancellation of Certification of Compliance; Severance) for violations of this section.

(l) Commission review of administrative actions. Administrative actions performed by the Director or Commission staff pursuant to this section are subject to review by the commissioners.

(m) Federal regulations. All references to the CFR in this section are references to the 1987 edition of the Code. The following federal regulations are adopted by reference and can be obtained at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711: 40 CFR §§124.8(b), 124.10(c)(1)(viii), 124.10(d), and 146.8(d). Where the word "director" is used in the adopted federal regulations, it should be interpreted to mean "commission."

(n) Effective date. For the regulations pertaining to Class V spent brine return injection wells, this section becomes effective upon approval of the Commission's Class V Underground Injection Control (UIC) Program for spent brine return injection wells by the USEPA under the Safe Drinking Water Act, §1422 (42 United States Code §300h-1). For all other regulations, this section becomes effective as provided in Section 2001.001 et seq. of the Texas Government Code.

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 15, 2024.

TRD-202404850
Haley Cochran
Assistant General Counsel, Office of the General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 475-1295

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER L. MEDICAL ADVISORY BOARD

The Executive Commissioner of the Texas Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes the repeal of §1.151, concerning Definitions, and §1.152, concerning Operation of the Medical Advisory Board (MAB); and new §1.151, concerning Definitions, and §1.152, concerning Operation of the Medical Advisory Board (MAB).

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the definitions, content, and processes of the Medical Advisory Board (MAB) and clarify compensation for MAB members.

The proposed repeals and new §1.151 and §1.152 are necessary to comply with changes to Texas Health and Safety Code §§12.091 - 12.098, Texas Transportation Code §521.294, and 37 Texas Administrative Code §15.58; and reflect updates to MAB membership, operations, requirements, medical packet contents, and confidentiality provisions that have significantly changed.

SECTION-BY-SECTION SUMMARY

The proposed repeals and new rules provide clarity, consistency, plain language, and style throughout.

The proposed repeal of and new §1.151 update definitions.

The proposed repeal of and new §1.152 remove the purpose, appointment, and terms since they are addressed in MAB Bylaws. The proposed language describes the operation of the MAB, including membership; function; meeting requirements; medical packet requirements; confidentiality; and pertinent records, reports, and testimony relating to the medical condition of an applicant. The proposal also clarifies MAB member compensation.

FISCAL NOTE

Christy Havel Burton, 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. This repeal and replace does not increase or decrease the department's revenue stream. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of $103,500 in fiscal year (FY) 2025, $103,500 in FY 2026, $103,500 in FY 2027, $103,500 in FY 2028, and $103,500 in FY 2029. The 88th Legislature, Regular Session, 2023, appropriated funds to the department for the purpose of increasing compensation for MAB members.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

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

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement leg-

islation that does not specifically state that Section 2001.0045 applies to the rules.

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 rules are in effect, the public benefit will be the safe operation of a vehicle, or proper use and storage of a handgun based on recommendations made by the Medical Advisory Board and final determination by the Department of Public Safety.

Christy Havel Burton 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 amendments will not have an economic impact on drivers or people authorized to use and store a handgun.

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 by mail to EMS/Trauma Systems Section, DSHS, Attn: Proposed Medical Advisory Board Rules, P.O. Box 149347, Mail Code 1876, Austin, Texas 78714-3247; or 1100 West 49th Street, Austin, Texas 78756; or email DSHSMAB@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 24R080" in the subject line.

25 TAC §1.151, §1.152

STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code Chapter 12, Subchapter H, which authorize the Executive Commissioner of Health and Human Services to adopt rules for the Medical Advisory Board; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of Health and Human Services to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 12 and 1001.

§1.151. Definitions.

§1.152. Operation of the Medical Advisory Board.

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 17, 2024.

TRD-202404871
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 535-8538

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25 TAC §1.151, §1.152

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code Chapter 12, Subchapter H, which authorize the Executive Commissioner of Health and Human Services to adopt rules for the Medical Advisory Board; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of Health and Human Services to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 12 and 1001.

§1.151. Definitions.

The following words and terms, when used in this section, have the following meanings, unless the text indicates otherwise.

(1) Applicant--An individual referred by the Department of Public Safety to the Medical Advisory Board (MAB) for medical review to include applicants defined under Texas Health and Safety Code §12.092(2)(b)(1) and (2).

(2) Bylaws--Bylaws of the Medical Advisory Board.

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

(4) Department of Public Safety (DPS)--Agency responsible for MAB referrals established under authority of 37 Texas Administrative Code Subchapter C, §15.58.

(5) Medical Advisory Board (MAB)--The body of physicians and optometrists licensed by the State of Texas and established by Texas Health and Safety Code §12.092. Each person on the MAB is a MAB member or "member." The MAB is administratively attached to the department.

(6) Medical Advisory Board Panel--A body of at least three MAB members assigned to review applicants and provide recommendations at the request of DPS. Additional members may be added as necessary to reach a consensus opinion.

(7) Medical Packet--Information provided to members on the MAB panel, including:

(A) medical conditions under review;

(B) other medical information or records provided by the applicant's health care providers about the medical conditions under review; and

(C) information provided by DPS, including Supplemental Medical History form, Medical Information Request form, and accident reports or other information about the medical conditions under review.

(8) Set--Group of medical packets prepared for a MAB panel to review.

(9) Texas Department of State Health Services (department)--Agency responsible for administering MAB activities under Texas Health and Safety Code Chapter 12, Subchapter H, Medical Advisory Board, §§12.091 - 12.098.

§1.152. Operation of the Medical Advisory Board.

(a) MAB Membership.

(1) The commissioner appoints MAB members from:

(A) persons licensed to practice medicine in Texas, including physicians who are board-certified in internal medicine, psychiatry, neurology, physical medicine, or ophthalmology and are jointly recommended by the department and the Texas Medical Association; and

(B) persons licensed to practice optometry in this state who are jointly recommended by the department and the Texas Optometric Association.

(2) Members may be recommended for dismissal, as described in the bylaws, for failure to perform in a professional manner, failure to attend meetings regularly, failure to review the minimum required number of cases, or missing two consecutive MAB board meetings without advanced notice to the chair.

(b) Function of the MAB. Upon a request for recommendation from DPS under 37 Texas Administrative Code §15.58, Medical Advisory Board Referrals; Texas Transportation Code Chapter 521, Subchapter N, General Provisions Relating To License Denial, Suspension, or Revocation; and Texas Government Code Chapter 411, Subchapter H, License to Carry A Handgun, the department must convene a MAB panel.

(1) Each MAB panel member must review the set of medical packets provided by the department within the time frame specified by the department.

(2) Upon completion of the applicant's packet review, each member must provide an independent opinion, in the form of a written recommendation, stating the member's opinion as to the ability of the applicant to safely operate a motor vehicle or to exercise sound judgment in the proper use and storage of a handgun, as appropriate. in the report the panel member may also make recommendations relating to DPS' subsequent action.

(3) The MAB panel recommendations or opinions are provided to DPS. The final decision to issue, renew, restrict, or revoke a driver's license or license to carry rests entirely with DPS.

(4) All members are expected to act in an impartial manner in their medical reviews. Any member unable to be impartial to any applicant before the MAB must declare this impartiality and may not participate in any MAB proceedings involving the applicant.

(5) MAB members are compensated for the review of a set of completed medical packets, and for each scheduled board or committee meeting attended.

(6) MAB members will convene at least every two years. The MAB complies with the requirements for open meetings under Texas Government Code Chapter 551.

(c) Medical Packet Requirements.

(1) The applicant must provide current medical information to the MAB pertinent to the medical conditions for which DPS requested the review and recommendation. Information must be provided within 90 days of the date MAB received the DPS request for recommendation by a licensed physician or, in the case of medical conditions impacting vision, by a licensed optometrist.

(2) Any licensed health care provider or facility who treated the applicant may provide information regarding the applicant's fitness to operate a motor vehicle safely or the ability to exercise sound judgment with respect to the proper use and storage of a handgun. Information completed or provided by a midlevel provider or an optometrist must be completed in accordance with Texas Occupations Code Chapters 157 and 351.

(3) The panel may require the applicant or license holder to undergo a medical or other examination at the applicant's or holder's expense. A person who conducts an examination under this subsection may be compelled to testify before the panel and in any subsequent proceedings under Texas Government Code Chapter 411, Subchapter H, or Texas Transportation Code Chapter 521, Subchapter N, as applicable, concerning the person's observations and findings.

(d) All records, reports, and testimony relating to the medical condition of an applicant:

(1) are for the confidential use of the MAB, a MAB panel, or DPS;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided in (e) of this section.

(e) In a subsequent proceeding under Texas Government Code Chapter 411, Subchapter H, or Texas Transportation Code Chapter 521, Subchapter N, the department may provide a copy of the report of the MAB or MAB panel and the medical packet relating to an applicant to:

(1) DPS;

(2) the applicant; and

(3) the presiding officer at the license to carry or driver's license hearing.

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

Filed with the Office of the Secretary of State on October 17, 2024.

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Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 535-8538

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION
25 TAC §289.130

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §289.130, concerning the Radiation Advisory Board.

BACKGROUND AND PURPOSE

Senate Bill (S.B.) 1592, 88th Legislature, Regular Session, 2023, amends Title 5, Subtitle D, Chapter 401, Section 401.015(a), Health and Safety Code (HSC), requiring an addition of one new representative who is licensed by the Board of Veterinary Medical Examiners to the Radiation Advisory Board and changing the composition of the board from 18 to 19 representatives. Amendments include rearranging the rule to align with HHSC advisory board rule-drafting guidelines and adding requirements found in Texas HSC.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §289.130 replaces "department" with "DSHS," and removes "shall" throughout. Edits are made to update references to include statutory authority. Formatting edits are made to update numbering. Changes include expanded reporting requirements, details of voting members' industry representation, term limits, and limitation of representatives of the public. Other changes include corrections to grammar and updated language.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated $3,000 additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $3,000 in fiscal year (FY) 2025, $3,000 in FY 2026, $3,000 in FY 2027, $3,000 in FY 2028, and $3,000 in FY 2029. The estimated cost accounts for travel reimbursement for the new member.

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 not result in an 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 regulation;

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

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

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

Christy Havel Burton, Chief Financial Officer, 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.

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

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined for each year of the first five years the rule is in effect, the public benefit anticipated as the result of amending the rule is to ensure the continued representation of individuals involved in radiation-related industries within Texas.

Christy Havel Burton, Chief Financial Officer, has also determined 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 most edits to the rule language are procedural updates, edits for clarity, and do not impose additional requirements to the registrant.

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.

COSTS TO REGULATED PERSONS

PUBLIC COMMENT

Written comments on the proposal may be submitted to Radiation Section, Consumer Protection Division, DSHS, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, or street address 1100 West 49th Street, Austin, Texas 78756; fax (512) 206-3793; or by email to CPDRuleComments@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) faxed or emailed before midnight on the last 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 23R057" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, which provides for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code Chapter 1001.

The amendment implements Texas Health and Safety Code Chapters 401 and 1001, and Texas Government Code Chapter 531.

§289.130. Radiation Advisory Board.

(a) Statutory authority. The Radiation Advisory Board (board) is established under Texas Health and Safety Code §401.015 and is subject to Texas Government Code Chapter 2110, concerning State Agency Advisory Committees. [~~The board. A Radiation Advisory Board shall be appointed under and governed by this section.~~]

[~~(1) The name of the board shall be the Radiation Advisory Board (board).~~]

[~~(2) The board is required to be established by Health and Safety Code, §401.015.~~]

[~~(b) Applicable law. The board is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.~~]

(b) [~~(c)~~] Purpose. The board advises [~~The purpose of the board is to provide advice to~~] the Executive Commissioner [~~of the Texas Health and Human Services Commission (Executive Commissioner)~~], the Texas Department of State Health Services (DSHS), the Railroad Commission of Texas (RRC), [~~Services' (department) radiation program,~~] the Texas Commission on Environmental Quality (TCEQ), [~~the Railroad Commission of Texas,~~] and other state agencies concerning [~~entities in the area of~~] state radiation policies and programs.

(c) [~~(d)~~] Tasks. The board: [~~shall advise the Executive Commissioner in accordance with Health and Safety Code, §401.019.~~]

(1) reviews and evaluates state radiation policies and programs;

(2) makes recommendations and furnishes technical advice to DSHS, RRC, TCEQ, and other state agencies relating to development, use, and regulation of radiation sources;

(3) reviews proposed rules and guidelines of any state agency related to the regulation of sources of radiation and recommends changes in proposed or existing rules and guidelines relating to those matters;

(4) develops and implements policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board; and

(5) adopts bylaws to guide its operation.

(d) Reporting Requirements. By December 31 of each year, the board files an annual written report with the Executive Commissioner covering the meetings and activities in the preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

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

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

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

(6) recommended amendments to this section; and

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

(e) Meetings.

(1) Open meetings. The board is not a "governmental body" as defined in the Open Meetings Act. However, to promote public participation, each board meeting is announced and conducted per the Open Meetings Act, Texas Government Code Chapter 551, except provisions allowing executive sessions.

(2) Frequency. The board meets quarterly on dates set by the board.

(A) A special meeting may be called by the chairperson or at least five members.

(B) Meetings are arranged and supported by DSHS staff.

(C) Members of the board will be given timely notice of each board meeting.

(3) Quorum. A simple majority of all members constitutes a quorum to transact official business. The board is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(4) Public comment. The agenda for each board meeting includes an item titled Public Comment, under which any person will be allowed to address the board on matters relating to board business. The chairperson may establish procedures for public comment, including a time limit on each comment.

(5) Documentation. A record must be kept of each board meeting.

[~~(e) Composition. The board shall be composed of 18 members appointed by the governor. The composition of the board shall include representatives from those areas as delineated in Health and Safety Code, §401.015.~~]

(f) Membership. [~~Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.~~]

(1) The board includes 19 members appointed by the Governor:

(A) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(B) one representative from labor;

(C) one representative from agriculture;

(D) one representative from the insurance industry;

(E) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Medical Board under Chapter 602, Texas Occupations Code;

(F) one hospital administrator;

(G) one individual licensed by the Texas Medical Board who specializes in nuclear medicine;

(H) one individual licensed by the Texas Medical Board who specializes in pathology;

(I) one individual licensed by the Texas Medical Board who specializes in radiology;

(J) one representative from the nuclear utility industry;

(K) one representative from the radioactive waste industry;

(L) one representative from the petroleum industry;

(M) one health physicist certified by the American Board of Health Physics;

(N) one individual licensed by the State Board of Dental Examiners;

(O) one representative from the uranium mining industry;

(P) one individual licensed by the State Board of Veterinary Medical Examiners; and

(Q) three representatives of the public.

(2) [~~(1)~~] Members are [~~shall be~~] appointed for staggered terms so [~~that~~] the terms of an equal or almost equal [~~a substantial equivalent~~] number of members will expire at the end [~~discretion~~] of each term. Regardless of the term limit, a member serves until a replacement has been appointed. This ensures sufficient, appropriate representation [~~the governor~~].

(A) [~~(2)~~] If a vacancy occurs, the Governor will appoint an individual [~~a person shall be appointed by the governor~~] to serve the unexpired portion of the [~~that~~] term.

(B) The term of each member is six years, except the term may be less than six years as necessary to stagger terms. A member may apply to serve one additional term.

(C) An individual is not eligible to be appointed as a representative of the public on the advisory board if that individual or individual's spouse is:

(i) engaged in an occupation in the health care field; or

(ii) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G of this chapter.

(g) Officers. The Governor designates a member of the board as the chairperson to serve at the will of the Governor. The board elects from its members a vice-chairperson and secretary. [~~The board shall elect a chairman, vice-chairman and secretary at its first meeting after August 31st of each year.~~]

(1) The chairperson serves until the first quarterly meeting of the fiscal year of each even-numbered year. The vice-chairperson serves until the first quarterly meeting of the fiscal year of each odd-numbered year.

[~~(1) Each officer shall serve until the next regular election of officers.~~]

(2) A member serves no more than two consecutive terms as chairperson or vice-chairperson.

(3) [~~(2)~~] The chairperson presides over [~~chairman shall preside at~~] all board meetings [~~at which he or she is in attendance~~], calls [~~call~~] meetings as specified in [~~accordance with~~] this section, appoints [~~appoint~~] subcommittees of the board as necessary, and ensures accurate [~~cause proper~~] reports are [~~to be~~] made to the board. The chairperson [~~chairman~~] may serve as an ex-officio member of any subcommittee of the board.

[~~(3) The vice-chairman shall perform the duties of the chairman in case of the absence or disability of the chairman. In case the office of chairman becomes vacant, the vice-chairman will serve until a successor is elected to complete the unexpired portion of the term of the office of chairman.~~]

(4) The vice-chairperson performs the duties of the chairperson in the event of an absence or the disability of the chairperson. If the position of the chairperson becomes vacant, the vice-chairperson will serve until a successor is appointed to complete the unexpired portion of the chairperson's term.

(5) [~~(4)~~] A vacancy [~~which occurs~~] in the office [~~offices~~] of vice-chairperson [~~chairman, vice-chairman~~] or secretary is [~~may be~~] filled at the next board meeting.

[~~(h) Meetings. The board shall meet quarterly on dates set by the board to conduct board business.~~]

[~~(1) A special meeting may be called by the chairman or at least five members of the board.~~]

[~~(2) Meeting arrangements shall be made by department staff.~~]

[~~(3) The advisory board is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the board shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~]

[~~(4) Each member of the board shall be informed of a board meeting in a timely manner.~~]

[~~(5) A simple majority of the members of the board shall constitute a quorum for the purpose of transacting official business.~~]

[~~(6) The board is authorized to transact official business only when in a legally constituted meeting with quorum present.~~]

[~~(7) The agenda for each board meeting shall include an item entitled public comment under which any person will be allowed to address the board on matters relating to board business. The chairman may establish procedures for public comment, including a time limit on each comment.~~]

(h) [~~(i)~~] Attendance. Members must [~~shall~~] attend board meetings as scheduled. Members must [~~shall~~] attend and participate in meetings of subcommittees to which the members are [~~member is~~] assigned.

(1) A member must [~~shall~~] notify the chairperson [~~chairman~~] or appropriate DSHS [~~department~~] staff if the member [~~he or she~~] is unable to attend a scheduled meeting.

(2) A member may be removed from the board [~~It is grounds for removal from the board~~] if the [a] member cannot discharge [~~the member's~~] duties for a substantial part of the appointed term [~~for which the member is appointed~~] because of illness or disability[~~,~~] or if [~~is~~] absent from more than half of the board meetings during a calendar year without an excuse approved by a majority vote of the [~~advisory~~] board.

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

[~~(j) Staff. Staff support for the board shall be provided by the department.~~]

(i) [~~(k)~~] Procedures. Robert's [~~Roberts~~] Rules of Order, Newly Revised, is [~~shall be~~] the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the board must be approved by a majority vote of the members present once a quorum is established.

(2) Each member may vote once during any call for votes [~~shall have one vote~~].

(3) A member may not authorize another individual to represent the member by proxy.

(4) The board makes [~~shall make~~] decisions in discharging [~~the discharge of its~~] duties without discrimination based on any individual's [~~person's~~] race, creed, sex [~~gender~~], religion, national origin, age, physical condition, or economic status.

(5) Minutes of each board meeting will [~~shall~~] be taken by DSHS [~~department~~] staff. A summary of the meeting is provided to each board member before the next meeting.

[~~(A) A summary of the meeting shall be provided to each member of the board within 30 days of each meeting.~~]

[~~(B) After approval by the board, the minutes shall be signed by the secretary.~~]

(j) [~~(l)~~] Subcommittees. The board may establish subcommittees [~~as necessary~~] to assist the board in carrying out its duties.

(1) The chairperson may [~~chairman shall~~] appoint members [~~of the board~~] to serve on subcommittees and to act as subcommittee chairpersons. The chairperson [~~chairman~~] may also appoint nonmembers of the board to serve on subcommittees as the need for additional expertise arises.

(2) Subcommittees must [~~shall~~] meet when called by the subcommittee chairperson or when [~~so~~] directed by the board.

(3) The [~~A~~] subcommittee chairperson makes [~~shall make~~] regular reports to the board at each board meeting or in interim written reports, as needed. The reports [~~shall~~] include an executive summary or minutes of each subcommittee meeting.

(k) [~~(m)~~] Statement by members.

(1) The Executive Commissioner, DSHS [~~the department~~], and the board are not [~~shall not be~~] bound in any way by any statement or action on the part of any [~~board~~] member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner, DSHS [~~department~~], or board.

(2) The board and its members may [~~not~~] participate in legislative activity in the name of the Executive Commissioner or DSHS [~~the department except~~] with approval through the DSHS [~~department's~~] legislative process. Members may represent [~~Board members are not prohibited from representing~~] the board's decisions, themselves, or other entities in the legislative process.

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

(4) A [~~board~~] member must [~~should~~] not disclose confidential information acquired through [~~his or her~~] board membership.

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

(6) A [~~board~~] member with [~~who has~~] a personal or private interest in a matter pending before the board must [~~shall~~] publicly disclose the fact in a board meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the [~~board~~] member has a direct financial [~~pecuniary~~] interest in the matter but does not include the [~~board~~] 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.

[~~(n) Reports to the department. The board shall file an annual written report with the Commissioner of the department or his designee.~~]

(l) [~~(o)~~] Reimbursement for expenses. A [~~In accordance with the requirements set forth in the Government Code, Chapter 2110, a board~~] member may receive reimbursement for the member's expenses incurred for each day the member engages in official board business as specified in Texas Government Code Chapter 2110.

(1) Compensatory per diem is not [~~No compensatory per diem shall be~~] paid to [~~board~~] members unless required by law, but members are [~~shall be~~] reimbursed for travel, meals, lodging, and incidental expenses to the extent permitted by the current General Appropriations Act. A member may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the DSHS Travel Policy. [~~in accordance with the General Appropriations Act.~~]

(2) A [~~board~~] member who is an employee of a state agency, other than DSHS [~~the department~~], may not receive reimbursement for expenses from DSHS [~~the department~~] if the member [~~he or she~~] is reimbursed by that state agency.

(3) A nonmember of the board who is appointed to serve on a subcommittee may not receive reimbursement for expenses from DSHS [~~the department~~].

(4) Each member [~~who is~~] to be reimbursed for expenses must [~~shall~~] submit to staff the member's receipts for expenses and any required official forms within [~~no later than~~] 14 days after each board meeting.

(5) Requests for reimbursement of expenses must [~~shall~~] be made on official state travel vouchers prepared by DSHS [~~department~~] staff.

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 21, 2024.

TRD-202404917
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 834-6655

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 259. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §259.61, concerning Process for Enrollment of an Individ-

ual; §259.79, concerning Renewal and Revision of an IPC; §259.309, concerning Training of CMA Staff Persons and Volunteers; §259.317 concerning CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual; §259.357, concerning Training of DSA Staff Persons, Service Providers, and Volunteers; and §260.369, concerning DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Texas Human Resources Code §48.051(b-1), added by House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. Section 48.051 requires a person, including an officer, employee, agent, contractor, or subcontractor of a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142, who has cause to believe that an individual receiving services from the HCSSA, is being or has been subjected to abuse, neglect, or exploitation, to immediately report it to HHSC.

A direct service agency (DSA) in the CLASS Program must be licensed as a HCSSA and a CLASS case management agency (CMA) may be licensed as a HCSSA. To comply with Section 48.501, these proposed amendments change the current CLASS Program abuse, neglect, or exploitation (ANE) reporting requirement from the Texas Department of Family and Protective Services (DFPS) to HHSC. Transferring the function relating to the intake of reports of ANE from DFPS to HHSC creates a more streamlined process because HHSC is currently responsible for investigating these reports in the CLASS Program.

Therefore, the proposed amendments to these rules for CLASS CMAs and CLASS DSAs remove all references to DFPS, the DFPS Abuse Hotline toll-free telephone number, and the DFPS Abuse Hotline website and replaces them with references to HHSC, the HHSC toll-free telephone number, and the HHSC online Texas Unified Licensure Information Portal. The proposed amendment to §259.61 and §259.79 updates a rule reference.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the amendments are merely codifying current procedures and there are no requirements to alter business processes.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

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 improved oversight by creating a single point of contact for reports and investigations of ANE.

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 amendments are merely codifying current procedures.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R072" in the subject line.

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 2. ENROLLMENT PROCESS, PERSON-CENTERED SERVICE PLANNING, AND REQUIREMENTS FOR HOME AND COMMUNITY-BASED SETTINGS

26 TAC §259.61

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.61. Process for Enrollment of an Individual.

(a) After HHSC notifies a CMA, as described in §259.55(c) of this division (relating to Written Offer of CLASS Program Services), that an individual selected the CMA, the CMA must assign a case manager to perform the following functions as soon as possible, but no later than 14 calendar days after HHSC's notification:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a contract;

(2) conduct an initial in-person visit in the individual's residence with the individual and LAR or actively involved person at a time convenient to the individual and LAR to:

(A) provide an oral and written explanation of the following to the individual and LAR or actively involved person:

(i) CLASS Program services, including TAS if the individual is receiving institutional services;

(ii) CFC services;

(iii) the mandatory participation requirements of an individual described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(iv) the CDS option described in §259.71 of this division (relating to CDS Option);

(v) the right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing);

(vi) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(vii) the process by which the individual, LAR, or actively involved person may file a complaint regarding case management as required by §52.117 of this title [~~40 TAC §49.309~~] (relating to Complaint Process);

(viii) that the HHSC Office of the Ombudsman toll-free telephone number at 1-877-787-8999 may be used to file a complaint regarding the CMA;

(ix) voter registration, if the individual is 18 years of age or older;

(x) that, while the individual is staying at a location outside the catchment area in which the individual resides but within the state of Texas for a period of no more than 60 consecutive days, the individual and LAR or actively involved person may request that the DSA provide:

(I) transportation as a habilitation activity, as described in §259.5(56)(B)(i)(IX) of this subchapter (relating to Definitions);

(II) out-of-home respite in a camp described in §259.361(b)(2)(D) of this chapter (relating to Respite and Dental Treatment);

(III) adaptive aids;

(IV) nursing; and

(V) CFC PAS/HAB;

(xi) the use of electronic visit verification, as required by 1 TAC Chapter 354, Subchapter O; and

(xii) how to contact the individual's case manager; and

(B) use the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of:

(i) the eligibility requirements for:

(I) CLASS Program services, as described in §259.51(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(II) CFC services for individuals who do not receive MAO Medicaid, as described in §259.51(b) of this subchapter; and

(III) CFC services for individuals who receive MAO Medicaid, as described in §259.51(c) of this subchapter;

(ii) the reasons CLASS Program services and CFC services may be suspended, as described in §259.157 of this chapter (relating to Suspension of CLASS Program Services or CFC Services); and

(iii) that CLASS Program services and CFC services may be terminated as described in §§259.161, 259.163, 259.165, and 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy); and

(C) educate the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(3) give the individual or LAR the HHSC Waiver Program Verification of Freedom of Choice form to document the individual's or LAR's choice regarding the CLASS Program or the ICF/IID Program.

(b) A CMA must:

(1) as soon as possible, but no later than two business days after the case manager's initial in-person visit required by subsection (a)(2) of this section:

(A) collect the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the Community Living Assistance and Support Services Provider Manual; and

(B) provide the individual's selected DSA with the information collected in accordance with subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility, as required by §259.103(1) of this chapter; and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrolling into the CLASS Program.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days after the case manager's initial in-person visit, as required by §259.103(1) of this chapter, but is making good faith efforts to complete the application, the CMA:

(1) may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (2) of this subsection;

(2) must not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial in-person visit; and

(3) must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days after the case manager's initial in-person visit, as required by §259.103(1) of this chapter, and is not making good faith efforts to complete the application, a CMA must request, in writing, that HHSC withdraw the offer of enrollment made to the individual in accordance with §259.55(d)(2) of this division.

(e) If a DSA serving the catchment area in which an individual resides is not willing to provide CLASS Program services or CFC services to the individual because the DSA has determined that it cannot ensure the individual's health and safety, the CMA must provide to HHSC, in writing, the specific reasons the DSA has determined that it cannot ensure the individual's health and safety.

(f) During the initial in-person visit described in subsection (a)(1) of the section, the case manager must determine whether an individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS;

(3) the individual's proposed enrollment IPC will not include SFS; and

(4) the individual anticipates needing TAS.

(g) If a case manager determines that an individual meets the criteria described in subsection (f) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the catchment area in which the individual will reside;

(2) complete, with the individual or LAR, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form found on the HHSC website in accordance with the form's instructions, which includes:

(A) identifying the items and services described in §272.5(e) of this title (relating to Service Description) that the individual needs;

(B) estimating the monetary amount for the items and services identified on the form, which must be within the service limit described in §259.73(a)(4) of this division (relating to Service Limits); and

(C) documenting the individual's or LAR's choice of TAS provider;

(3) submit the completed form to HHSC for authorization;

(4) if HHSC authorizes the form, send the form to the TAS provider chosen by the individual or LAR; and

(5) include TAS and the monetary amount authorized by HHSC on the individual's proposed enrollment IPC.

(h) A DSA must ensure that the following functions are performed during an in-person visit in the individual's residence at a time convenient to the individual and LAR as soon as possible, but no later than 14 calendar days after the CMA provides information to the DSA as required by subsection (b)(1)(B) of this section:

(1) a DSA staff person must:

(A) inform the individual and LAR or actively involved person, orally and in writing:

(i) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(ii) the process by which the individual, LAR, or actively involved person may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by §52.117 of this title [~~40 TAC §49.309~~]; and

(iii) that the HHSC [~~Complaint and Incident Intake~~] toll-free telephone number at 1-800-458-9858 may be used to file a complaint regarding the DSA; and

(B) educate the individual and LAR or actively involved person about protecting the individual from abuse, neglect, and exploitation;

(2) an appropriate professional must complete an adaptive behavior screening assessment in accordance with the assessment instructions; and

(3) an RN, in accordance with the Community Living Assistance and Support Services Provider Manual, must complete:

(A) a nursing assessment, using the HHSC CLASS/DBMD Nursing Assessment form;

(B) the HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the ID/RC Assessment.

(i) A DSA must:

(1) ensure that the primary diagnosis of the individual documented on the ID/RC Assessment is approved by a physician;

(2) submit the following documentation to HHSC for HHSC's determination of whether the individual meets the LOC VIII criteria required by §259.51(a)(2) of this subchapter:

(A) the completed adaptive behavior screening assessment;

(B) the completed HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the completed ID/RC Assessment; and

(3) send the completed HHSC CLASS/DBMD Nursing Assessment form described in subsection (h)(3)(A) of this section to the CMA.

(j) In accordance with §259.63(a)(1) of this division (relating to Determination by HHSC of Whether an Individual Meets LOC VIII Criteria), HHSC reviews the documentation described in subsection (i)(2) of this section.

(k) If a DSA receives written notice from HHSC in accordance with §259.63(c)(1) of this division that an individual meets the LOC VIII criteria, the DSA must notify the individual's CMA of HHSC's decision as soon as possible, but no later than one business day after receiving the notice from HHSC.

(l) If HHSC determines that an individual does not meet the LOC VIII criteria, HHSC sends written notice of the denial of the individual's request for enrollment into the CLASS Program:

(1) to the individual or LAR in accordance with §259.153(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program); and

(2) to the individual's DSA and CMA in accordance with §259.63(d) of this division.

(m) If a CMA receives notice from a DSA, as described in subsection (k) of this section, that HHSC determined that an individual meets the LOC VIII criteria, the case manager must:

(1) ensure that the service planning team meets in person or by videoconferencing to develop:

(A) a proposed enrollment IPC, a PAS/HAB plan, IPPs, and an HHSC IPP Addendum form for the individual in accordance with §259.65 of this division (relating to Development of an Enrollment IPC); and

(B) an individual transportation plan, if transportation as a habilitation activity or as an adaptive aid is included on the proposed enrollment IPC; and

(2) submit the documents described in paragraph (1) of this subsection to HHSC for review in accordance with §259.65 of this division.

(n) HHSC reviews a proposed enrollment IPC in accordance with §259.69 of this division (relating to HHSC's Review of a Proposed Enrollment IPC) to determine if:

(1) the proposed enrollment IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter; and

(2) the CLASS Program services and CFC services specified in the proposed enrollment IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this division.

(o) A CMA and DSA must not provide a CLASS Program service or CFC service to an individual before HHSC notifies the CMA, in accordance with §259.69(c)(1) of this division, that the individual's request for enrollment into the CLASS Program has been approved. If a CMA or DSA provides CLASS Program services or CFC services to an individual before the effective date of the individual's enrollment IPC authorized by HHSC, HHSC does not reimburse the CMA or DSA for those services.

(p) If HHSC notifies a CMA in accordance with §259.69(c)(1) of this division that an individual's request for enrollment is approved:

(1) the CMA must ensure the case manager complies with §259.69(c)(2) of this division; and

(2) the CMA and DSA must comply with §259.69(g) of this division.

(q) If HHSC notifies a CMA in accordance with §259.69(e) of this division that an individual's request for enrollment into the CLASS Program is approved, but action is being taken by HHSC to deny a CLASS Program service or CFC service and modify the proposed enrollment IPC:

(1) the CMA must comply with §259.69(f) of this division; and

(2) the CMA and DSA must comply with §259.69(g) of this division.

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 18, 2024.

TRD-202404903
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 438-2910

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DIVISION 3. REVIEWS

26 TAC §259.79

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.79. Renewal and Revision of an IPC.

(a) Beginning the effective date of an individual's IPC, as determined by §259.65(g) of this subchapter (relating to Development of an Enrollment IPC) or §259.77(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(1) meet with the individual and LAR in person to conduct an IPP service review meeting at a time and place convenient to the individual and LAR; and

(2) at least once during an IPC period, conduct an IPP service review meeting in person with the individual and LAR in the individual's residence.

(b) During an IPP service review meeting described in subsection (a) of this section, a case manager must:

(1) review the individual's progress toward achieving the goals and outcomes as described on the IPP for each service listed on the individual's IPC;

(2) if the individual's IPC includes nursing or CFC PAS/HAB, and any of those services are not identified on the IPC as critical to meeting the individual's health and safety, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety;

(3) if a service backup plan has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine whether or not the plan was effective;

(4) if the case manager determines that a service may now be critical to the individual's health and safety, as described in paragraph (2) of this subsection, or that the service backup plan was ineffective, as described in paragraph (3) of this subsection, document the determination for discussion at a service planning team meeting convened in accordance with subsection (c) or (d) of this section;

(5) complete the HHSC IPP Service Review form in accordance with the *Community Living Assistance and Support Services Provider Manual*; and

(6) ensure the individual or LAR signs and dates the HHSC IPP Service Review form.

(c) No more than 90 calendar days before the end of an individual's current IPC period, the case manager must convene a service planning team meeting in person or by videoconferencing in which:

(1) the service planning team:

(A) reviews the HHSC CLASS/DBMD Nursing Assessment form completed by an RN as described in §259.75(a)(1)(B) of this division (relating to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria);

(B) addresses any information included in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form, Recommendations/Coordination of Care, to ensure the individual's needs are met;

(C) documents on the HHSC CLASS/DBMD Coordination of Care form how the information in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form was addressed;

(D) develops a proposed renewal IPC that:

(i) documents each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(ii) specifies the number of units of each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(iii) for each CLASS Program service:

(I) is within the service limit described in §259.73 of this subchapter (relating to Service Limits);

(II) if an adaptive aid, meets the requirements in Subchapter F, Division 1, of this chapter (relating to Adaptive Aids); and

(III) if a minor home modification, meets the requirements in Subchapter F, Division 2, of this chapter (relating to Minor Home Modifications);

(iv) for CFC ERS, meets the requirements in Subchapter F, Division 3, of this chapter (relating to CFC ERS);

(v) states if the individual will receive CFC support management;

(vi) describes any other service or support to be provided to the individual through sources other than CLASS Program services or CFC services;

(vii) if the proposed renewal IPC includes nursing or CFC PAS/HAB, identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter (relating to Service Backup Plans);

(viii) if the individual chooses to receive services through the CDS option, identifies:

(I) the name of the individual's FMSA; and

(II) the type and estimated units of each CLASS Program service and CFC service provided through the CDS option;

(E) develops a renewal IPP for each CLASS Program service and CFC service listed on the proposed renewal IPC, other than CFC support management, as required by §259.67 of this subchapter (relating to Development of IPPs);

(F) develops a new HHSC IPP Addendum form;

(G) develops a new PAS/HAB plan based on review of the information obtained from assessments conducted and observations made by a DSA as required by §259.61(h)(2) and (3) of this subchapter;

(H) if the proposed renewal IPC identifies nursing or CFC PAS/HAB as critical, develops or revises a service backup plan for the service in accordance with §259.89 of this subchapter; and

(I) if transportation as a habilitation activity or as an adaptive aid is included on the proposed renewal IPC, develops a new individual transportation plan;

(2) the case manager:

(A) provides an oral and written explanation of the following to an individual and LAR or actively involved person:

(i) CLASS Program services;

(ii) CFC services;

(iii) the mandatory participation requirements described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(iv) the CDS option described in §259.71 of this subchapter (relating to CDS Option);

(v) the right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing);

(vi) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(vii) the process by which the individual, LAR, or actively involved person may file a complaint regarding case management as described in §52.117 of this title [~~40 TAC §49.309~~] (relating to Complaint Process);

(viii) that the HHSC Office of the Ombudsman toll-free telephone number at 1-877-787-8999 may be used to file a complaint regarding the CMA;

(ix) voter registration, if the individual is 18 years of age or older; and

(x) how to contact the individual's case manager;

(B) provides an oral explanation to the individual and to the LAR or actively involved person that the individual, LAR, actively involved person may request:

(i) that the individual transfer to a different CMA, DSA, or FMSA at any time while enrolled in the CLASS Program;

(ii) that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp described in §259.361(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, nursing, or CFC PAS/HAB while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas for a period of no more than 60 consecutive days; and

(iii) that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB as described in clause (ii) of this subparagraph more than once during an IPC period;

(C) uses the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of the following:

(i) the eligibility requirements for:

(I) CLASS Program services, as described in §259.51(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(II) CFC services for to individuals who do not receive MAO Medicaid, as described in §259.51(b) of this subchapter; and

(III) CFC services for individuals who receive MAO Medicaid, as described in §259.51(c) of this subchapter; and

(ii) that CLASS Program services or CFC services may be terminated as described in §§259.161, 259.163, 259.165, and 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy);

(D) gives the individual and the LAR or actively involved person a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(E) has the individual or LAR select a CMA and DSA by completing an HHSC Selection Determination form as described in the Community Living Assistance and Support Services Provider Manual;

(F) educates the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(G) documents that the case manager complied with subparagraphs (A) - (F) of this paragraph; and

(3) a DSA staff person:

(A) provides an oral and written explanation of the following to the individual and LAR or actively involved person:

(i) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(ii) the process by which the individual, LAR, or actively involved person may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by §52.117 of this title [~~40 TAC §49.309~~];

(iii) that the HHSC [~~Complaint and Incident Intake~~] toll-free telephone number at 1-800-458-9858 may be used to file a complaint; and

(iv) how to contact the DSA;

(B) educates the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(C) documents that the staff person complied with subparagraphs (A) and (B) of this paragraph.

(d) Except as provided in subsection (e) of this section, no later than five business days after becoming aware that an individual's need for a CLASS Program service or CFC service changes, the case manager must:

(1) convene a service planning team meeting in person or by videoconferencing in which the service planning team:

(A) develops a proposed revised IPC;

(B) if the proposed revised IPC includes nursing or CFC PAS/HAB:

(i) identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter; and

(ii) develops a new or revised service backup plan for the service in accordance with §259.89 of this subchapter;

(C) if the IPC is revised because the individual wants to receive a service through the CDS option, identifies on the proposed revised IPC:

(i) the name of the individual's FMSA; and

(ii) the type and estimated units of each CLASS Program service and CFC service the individual wants to receive through the CDS option;

(D) develops any revised IPPs;

(E) if the individual's needs have substantially changed, develops a revised HHSC IPP Addendum form;

(F) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB, develops a new or revised PAS/HAB plan; and

(G) if transportation as a habilitation activity or as an adaptive aid is included on the proposed revised IPC, develops a new or revised individual transportation plan; and

(2) if the individual may need cognitive rehabilitation therapy, assist the individual to obtain an assessment as required by §259.311(h) of this chapter (relating to CMA Service Delivery).

(e) If an individual receiving CFC PAS/HAB or the LAR requests CFC support management during an IPC year, the case manager must revise the IPC, as described in the *Community Living Assistance and Support Services Provider Manual.*

(f) A case manager must:

(1) ensure that a proposed renewal IPC or proposed revised IPC developed in accordance with subsection (c) or (d) of this section meets the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter; and

(2) ensure that a renewal IPP or revised IPP, developed in accordance with subsection (c) or (d) of this section, is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(g) If an individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC or proposed revised IPC developed in accordance with subsection (c) or (d) of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA;

(2) for a proposed renewal IPC, at least 30 calendar days before the end of the individual's IPC period:

(A) submit to HHSC for its review:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §259.75(a)(3) of this division;

(vi) the ID/RC Assessment authorized by HHSC;

(vii) the HHSC Non-Waiver Services form;

(viii) Choice Lists for the CLASS Program;

(ix) a service backup plan, if required by subsection (c)(1)(H) of this section;

(x) the new individual transportation plan, if required by subsection (c)(1)(I) of this section;

(xi) the HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by:

(I) §259.255 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than $500);

(II) §259.257 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing $500 or More);

(III) §259.275 of this chapter (relating to Requirements for Authorization to Purchase a Minor Home Modification); and

(IV) §259.361 of this chapter;

(xii) the HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xiii) denial documentation from non-waiver resources, if any; and

(xiv) if a skilled or a specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan, if required by subsection (c)(1)(G) of this section;

(v) a service backup plan, if required by subsection (c)(1)(H) of this section; and

(vi) the new individual transportation plan, if required by subsection (c)(1)(I) of this section; and

(C) if the renewal IPC includes a service through the CDS option, send the FMSA a copy of:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan, if required by subsection (c)(1)(G) of this section;

(v) a service backup plan, if required by subsection (c)(1)(H) of this section; and

(vi) the new individual transportation plan, if required by subsection (c)(1)(I) of this section; and

(3) for a proposed revised IPC, at least 30 calendar days before the effective date of the proposed revised IPC determined by the service planning team:

(A) submit to HHSC for its review:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the HHSC Non-Waiver Services form;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form;

(vi) a new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(vii) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section;

(viii) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section;

(ix) an HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by:

(I) §259.255 of this chapter;

(II) §259.257 of this chapter;

(III) §259.275 of this chapter; and

(IV) §259.361 of this chapter;

(x) an HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xi) denial documentation from non-waiver resources, if any; and

(xii) if a skilled or specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(v) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section; and

(vi) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section; and

(C) if the revised IPC includes a service through the CDS option, send the FMSA a copy of:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(v) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section; and

(vi) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section.

(h) If an individual or LAR requests a CLASS Program service or a CFC service that the case manager or DSA has determined does not meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) or §259.65(b) of this subchapter, the CMA must, in accordance with the *Community Living Assistance and Support Services Provider Manual*, send the individual or LAR written notice of the denial or proposed reduction of the requested CLASS Program service, copying the DSA and, if applicable, the FMSA.

(i) If a CMA is required to send a written notice of the denial or proposed reduction of a CLASS Program service or CFC service, as described in subsection (h) of this section, the CMA must:

(1) at least 30 calendar days before the end of the IPC period, submit to HHSC for its review:

(A) a proposed renewal IPC or proposed revised IPC that includes the type and amount of CLASS Program services or CFC services in dispute and not in dispute, and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the renewal IPPs;

(C) the new or revised HHSC IPP Addendum form;

(D) the new or revised PAS/HAB plan, if required by subsection (c)(1)(G) or (d)(1)(F) of this section; and

(E) the new or revised individual transportation plan, if required by subsection (c)(1)(I) or (d)(1)(G) of this section; and

(2) if the individual receives a service through the CDS option, send the FMSA a copy of the documents submitted to HHSC in accordance with paragraph (1) of this subsection.

(j) At HHSC's request, a CMA must submit additional documentation supporting a proposed renewal IPC or proposed revised IPC submitted to HHSC no later than 10 calendar days after the date of HHSC's request.

(k) If HHSC determines that a proposed renewal IPC or proposed revised IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter and the CLASS Program services and CFC services specified in the IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter:

(1) HHSC notifies the individual's CMA, in writing, that the renewal IPC or revised IPC is authorized;

(2) the CMA must send a copy of the authorized renewal or revised IPC to the DSA and, if the individual receives a service though the CDS option, to the FMSA; and

(3) the CMA and the DSA must:

(A) electronically access MESAV to determine if the information on the renewal or revised IPC is consistent with the information in MESAV;

(B) if the information on the renewal or revised IPC is inconsistent with the information in MESAV, notify HHSC of the inconsistency; and

(C) initiate CLASS Program services and CFC services for the individual in accordance with the individual's renewal or revised IPC no later than seven calendar days after the CMA receives HHSC's notification.

(l) If an individual's IPC period expires before HHSC approves a proposed renewal IPC:

(1) a CMA and DSA must continue to provide services to the individual until HHSC authorizes the proposed renewal IPC to ensure continuity of care and prevent the individual's health and welfare from being jeopardized; and

(2) if HHSC authorizes the proposed renewal IPC as described in subsection (k)(1) of this section, HHSC will reimburse the CMA and DSA for services provided, as required by paragraph (1) of this subsection, for a period of not more than 180 calendar days before the date HHSC receives the documentation described in subsection (i)(2) of this section from the DSA.

(m) The process by which an individual's CLASS Program services or CFC services are terminated or denied based on HHSC's review of a proposed renewal IPC or proposed revised IPC is described in §259.83(c) - (e) of this division (relating to Utilization Review of an IPC by HHSC).

(n) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

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 18, 2024.

TRD-202404904
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 438-2910

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SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

26 TAC §259.309, §259.317

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments implement subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.309. Training of CMA Staff Persons and Volunteers.

(a) A CMA must ensure that:

(1) a CMA staff person completes training as described in the *Community Living Assistance and Support Services Provider Manual*;

(2) a CMA staff person completes training on the CLASS Program and CFC, including the requirements of this chapter and the CLASS Program services and CFC services described in §259.7 of this chapter (relating to Description of the CLASS Program and CFC Option); and

(3) a case manager completes a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the case manager's date of hire.

(b) A CMA must:

(1) ensure that each CMA staff person and volunteer:

(A) is trained on and knowledgeable of:

(i) acts that constitute abuse, neglect, and exploitation;

(ii) signs and symptoms of abuse, neglect, and exploitation; and

(iii) methods to prevent abuse, neglect, and exploitation;

(B) is instructed to report to HHSC [~~DFPS~~] immediately, but not later than 24 hours, after having knowledge or suspicion that an individual has been or is being abused, neglected, or exploited, by:

(i) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(ii) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~]; and

(C) is provided with the instructions described in subparagraph (B) of this paragraph in writing;

(2) conduct the activities described in paragraph (1)(A) - (C) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the CMA staff person or volunteer was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the CMA staff person or volunteer is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted; and

(C) the name of the person or organization who conducted the training.

§259.317. CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a CMA, staff person, volunteer, or controlling person of the CMA knows or suspects an individual is being or has been abused, neglected, or exploited, the CMA must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] immediately, but not later than 24 hours after having knowledge or suspicion, by:

(1) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(2) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~].

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

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Karen Ray
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Health and Human Services Commission
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For further information, please call: (512) 438-2910

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SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

26 TAC §259.357, §259.369

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments implement subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.357. Training of DSA Staff Persons, Service Providers, and Volunteers.

(a) A DSA must ensure that:

(1) a DSA staff person who has direct contact with an individual completes training described in the *Community Living Assistance and Support Services Provider Manual*; and

(2) a DSA staff person whose duties include participating as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

(b) A DSA must ensure that, before providing services to an individual:

(1) a service provider of transportation as a habilitation activity completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed tasks regarding habilitation;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *Community Living Assistance and Support Services Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible; and

(2) a service provider of CFC PAS/HAB completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed CFC PAS/HAB activities;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training in the CFC PAS/HAB activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *Community Living Assistance and Support Services Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible.

(c) A DSA must, if requested by an individual or LAR:

(1) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC so the service provider meets any additional qualifications desired by the individual or LAR.

(d) The supervisor of a service provider of transportation as a habilitation activity or CFC PAS/HAB must, in accordance with the *Community Living Assistance and Support Services Provider Manual*, evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

(e) A DSA must:

(1) ensure that each service provider, staff person, and volunteer of the DSA:

(A) is trained on and knowledgeable of:

(i) acts that constitute abuse, neglect, and exploitation of an individual;

(ii) signs and symptoms of abuse, neglect, and exploitation; and

(iii) methods to prevent abuse, neglect, and exploitation;

(B) is instructed to report to HHSC [~~DFPS~~] immediately, but not later than 24 hours, after having knowledge or suspicion that an individual has been or is being abused, neglected, or exploited, by:

(i) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(ii) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~]; and

(C) is provided with the instructions described in subparagraph (B) of this paragraph in writing;

(2) conduct the activities described in paragraph (1) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the service provider, staff person, or volunteer of the DSA was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the service provider, staff person, or volunteer of the DSA is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted or completed; and

(C) except for the training described in subsection (a)(2) of this section, the name of the person who conducted the training.

§259.369. DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a DSA, service provider, staff person, volunteer, or controlling person knows or suspects that an individual is being or has been abused, neglected, or exploited, the DSA must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] immediately, but not later than 24 hours after having knowledge or suspicion, by:

(1) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(2) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~].

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

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Karen Ray
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CHAPTER 260. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to Texas Administrative Code rules §260.61, concerning Process for Enrollment of an Individual; and §260.219, concerning Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Texas Human Resources Code §48.051(b-1), added by House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. Section 48.051 requires a person, including an officer, employee, agent, contractor, or subcontractor of a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142, who has cause to believe that an individual receiving services from the HCSSA, is being or has been subjected to abuse, neglect, or exploitation, to immediately report it to HHSC.

A program provider in the Deaf Blind Multiple Disabilities (DBMD) Program must be licensed as a HCSSA. To comply with Section 48.501, these proposed amendments change the current DBMD Program abuse, neglect, or exploitation (ANE) reporting requirement from the Texas Department of Family and Protective Services (DFPS) to HHSC. Transferring the function relating to the intake of reports of ANE from DFPS to HHSC creates a more streamlined process because HHSC is currently responsible for investigating these reports in the DBMD Program.

Therefore, the proposed amendments to these rules remove all references to DFPS, the DFPS Abuse Hotline toll-free telephone number, and the DFPS Abuse Hotline website and replaces them with references to HHSC, the HHSC toll-free telephone number, and the HHSC online Texas Unified Licensure Information Portal. The proposed amendment to §260.61 updates a rule reference.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the amendments are merely codifying current procedures and there are no requirements to alter business processes.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

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 improved oversight by creating a single point of contact for reports and investigations of ANE.

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 amendments are merely codifying current procedures.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R073" in the subject line.

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 2. ENROLLMENT PROCESS, PERSON-CENTERED PLANNING, AND REQUIREMENTS FOR SERVICE SETTINGS

26 TAC §260.61

STATUTORY AUTHORITY

The amendment is 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; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§260.61. Process for Enrollment of an Individual.

(a) After HHSC notifies a program provider, as described in §260.55(d) of this division (relating to Written Offer of Enrollment in the DBMD Program), that an individual selected the program provider, the program provider must assign a case manager to the individual.

(b) A program provider must ensure that the assigned case manager contacts the individual or LAR by telephone, videoconferencing, or in person in the individual's residence as soon as possible but no later than five business days after the program provider receives the HHSC notification. During this initial contact, the case manager must:

(1) verify that the individual resides in a county for which the program provider has a contract;

(2) determine if the individual is currently enrolled in Medicaid;

(3) determine if the individual is currently enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the *Deaf Blind with Multiple Disabilities Program Manual* available on the HHSC website; and

(4) schedule an initial in-person visit to be held in the individual's residence with the individual and LAR or actively involved person at a time convenient to the individual and LAR and no later than 30 calendar days after the program provider receives the HHSC notification.

(c) During an initial in-person visit in an individual's residence at a time convenient to the individual and LAR, a case manager:

(1) must provide an oral and written explanation to the individual or LAR:

(A) of the DBMD Program services described in §260.7(c) of this chapter (relating to Description of the DBMD Program and CFC), including TAS if the individual is receiving institutional services;

(B) of the CFC services described in §260.7(e) of this chapter;

(C) of the individual's rights and responsibilities:

(i) as described in §260.111 of this subchapter (relating to Individual's Right to a Fair Hearing); and

(ii) as described in §260.113 of this subchapter (relating to Mandatory Participation Requirements of an Individual);

(D) the process by which the individual, LAR, or actively involved person may file a complaint regarding a program provider as required by §52.117 of this title [~~40 TAC §49.309~~] (relating to Complaint Process);

(E) that the HHSC [~~Complaint and Incident Intake~~] toll-free telephone number at 1-800-458-9858 may be used to file a complaint regarding the program provider;

(F) of the CDS option described in §260.71 of this division (relating to CDS Option);

(G) of voter registration, if the individual is 18 years of age or older;

(H) of how to contact the program provider, the case manager, and the RN;

(I) that while the individual is staying at a location outside the contracted service delivery area but within the state of Texas for a period of no more than 60 consecutive days, the individual and LAR or actively involved person may request that the program provider provide:

(i) transportation as a residential habilitation activity, as described in §260.343(b)(1)(A)(ii)(I) of this chapter (relating to Day Habilitation, Residential Habilitation, and CFC PAS/HAB);

(ii) case management;

(iii) nursing;

(iv) out-of-home respite in a camp described in §260.353 of this chapter (relating to Respite);

(v) adaptive aids;

(vi) intervener services; or

(vii) CFC PAS/HAB;

(J) of the use of electronic visit verification, as required by 1 TAC Chapter 354, Subchapter O; and

(K) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(2) must educate the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation;

(3) must use the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of:

(A) the eligibility requirements for:

(i) DBMD Program services, as described in §260.51(a) of this subchapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services);

(ii) CFC services for individuals who do not receive MAO Medicaid, as described in §260.51(b) of this subchapter; and

(iii) CFC services for individuals who receive MAO Medicaid, as described in §260.51(c) of this subchapter;

(B) the reasons DBMD Program services and CFC services may be suspended, as described in §260.85 of this chapter (relating to Suspension of DBMD Program Services and CFC Services); and

(C) the reasons DBMD Program services and CFC services may be terminated as described in §§260.89, 260.101, 260.103, and 260.105 of this chapter (relating to Termination of DBMD Program Services and CFC Services With Advance Notice Due to Ineligibility or Leave from the State, Termination of DBMD Program Services and CFC Services With Advance Notice Due to Non-compliance with Mandatory Participation Requirements, Termination of DBMD Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy, and Termination of DBMD Program Services and CFC Services Without Advance Notice Due to Behavior Causing Immediate Jeopardy);

(4) must complete an ID/RC Assessment;

(5) must give the individual or LAR the HHSC Verification of Freedom of Choice form to document the individual's or LAR's choice regarding the DBMD Program or the ICF/IID Program;

(6) may complete an adaptive behavior screening assessment or ensure an appropriate professional described in the assessment instructions completes the adaptive behavior screening assessment;

(7) may complete a Related Conditions Eligibility Screening Instrument or ensure an RN completes a Related Conditions Eligibility Screening Instrument; and

(8) may ensure an RN completes a nursing assessment using the HHSC CLASS/DBMD Nursing Assessment form.

(d) If an assessment described in subsection (c)(6) - (8) of this section is not completed during the initial in-person visit in the individual's residence, a case manager must ensure that the assessment is completed in person as soon as possible but no later than 10 business days after the date of the initial in-person visit.

(e) If an individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, a case manager must determine whether the individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS;

(3) the individual's proposed enrollment IPC will not include licensed assisted living or licensed home health assisted living; and

(4) the individual anticipates needing TAS.

(f) If a case manager determines that an individual meets the criteria described in subsection (e) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the service delivery area in which the individual will reside;

(2) complete, with the individual or LAR, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form in accordance with the form's instructions, which includes:

(A) identifying the items and services as described in §272.5(e) of this title (relating to Service Description) that the individual needs;

(B) estimating the monetary amount for the items and services identified on the form, which must be within the service limit described in §272.5(d) of this title; and

(C) documenting the individual's or LAR's choice of TAS provider;

(3) submit the completed form to HHSC for authorization;

(4) if HHSC authorizes the form, send the form to the TAS provider chosen by the individual or LAR; and

(5) include TAS and the monetary amount authorized by HHSC on the individual's proposed enrollment IPC.

(g) Before an individual enrolls in the DBMD Program, a case manager must inform the individual or LAR that the individual may reside in the individual's own home or family home or may receive a DBMD residential service described in §260.351 of this chapter (relating to Residential Services).

(h) A program provider must:

(1) gather and maintain the information necessary to process an individual's request for enrollment in the DBMD Program using forms prescribed by HHSC in the *Deaf Blind with Multiple Disabilities Program Manual;*

(2) assist an individual who does not have Medicaid financial eligibility or the individual's LAR to:

(A) complete an application for Medicaid financial eligibility; and

(B) submit the completed application to HHSC as soon as possible but no later than 30 calendar days after the case manager's initial in-person visit in the individual's residence;

(3) document in an individual's record any problems or barriers the individual or LAR encounters that may inhibit progress towards completing:

(A) the application for Medicaid financial eligibility; and

(B) enrollment in the DBMD Program; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(i) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (h)(2)(B) of this section as a result of problems or barriers documented in accordance with subsection (h)(3) of this section, but is making progress in collecting the documentation necessary to complete the application, the program provider:

(1) may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (2) of this subsection;

(2) must not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial in-person visit in the individual's residence;

(3) must ensure that the case manager documents the rationale for each extension in the individual's record; and

(4) must notify a DBMD program specialist, in writing, if the individual or LAR:

(A) does not submit a completed Medicaid application to HHSC no later than 365 calendar days after the date of the case manager's initial in-person visit in the individual's residence; or

(B) does not cooperate with the case manager in completing the enrollment process described in this section.

(j) A program provider must ensure that:

(1) the related conditions documented on the ID/RC Assessment for the individual are on the HHSC Approved Diagnostic Codes for Persons with Related Conditions list contained in the *Deaf Blind with Multiple Disabilities Program Manual;*

(2) the ID/RC Assessment is submitted to a physician for review; and

(3) if the individual or LAR requests dental services, other than an initial dental exam, a dentist completes the HHSC Prior Authorization for Dental Services form as required by §260.339 of this chapter (related to Dental Treatment).

(k) Not more than 10 business days after a program provider receives a signed and dated ID/RC Assessment from a physician establishing that an individual meets the requirements described in §260.51(a)(2) and (3) of this subchapter, the case manager must:

(1) convene a service planning team meeting; and

(2) ensure that the individual's service planning team:

(A) reviews the HHSC CLASS/DBMD Nursing Assessment form completed by an RN;

(B) reviews Addendum E of the HHSC CLASS/DBMD Nursing Assessment form, Recommendations/Coordination of Care, to address any information included in Addendum E to ensure the individual's needs are met;

(C) documents on the HHSC CLASS/DBMD Coordination of Care form how the information in Addendum E was addressed;

(D) reviews the completed ID/RC assessment signed and dated by a physician;

(E) reviews the adaptive behavior screening assessment;

(F) reviews the HHSC Related Conditions Eligibility Screening Instrument form;

(G) reviews the completed HHSC Prior Authorization for Dental Services form, if required by §260.339 of this chapter;

(H) completes an enrollment IPP in accordance with §260.65 of this division (relating to Development of an Enrollment IPP);

(I) completes a proposed enrollment IPC in accordance with §260.67 of this division (relating to Development of a Proposed Enrollment IPC); and

(J) if the enrollment IPP and the proposed enrollment IPC include:

(i) transportation provided as a residential habilitation activity or as an adaptive aid, develops an individual transportation plan; or

(ii) nursing, intervener services, or CFC PAS/HAB, develops a service backup plan if required by §260.213 of this chapter (relating to Service Backup Plans).

(l) As soon as possible but no later than 10 business days after an individual's service planning team completes an individual's enrollment IPP and proposed enrollment IPC, as described in subsection (k)(2) of this section, the case manager must:

(1) submit the following documents, completed according to form instructions, to HHSC for review:

(A) the proposed enrollment IPC;

(B) the ID/RC Assessment signed by a physician;

(C) the enrollment IPP;

(D) the PAS/HAB plan;

(E) the adaptive behavior screening assessment;

(F) the HHSC Related Conditions Eligibility Screening Instrument form;

(G) the HHSC DBMD Summary of Services Delivered form that documents pre-assessment services with supporting documentation;

(H) the HHSC Verification of Freedom of Choice form;

(I) the HHSC Non-Waiver Services form;

(J) the HHSC Documentation of Provider Choice form;

(K) the HHSC CLASS/DBMD Nursing Assessment form;

(L) the HHSC Prior Authorization for Dental Services form, if required by §260.339 of this chapter;

(M) the HHSC Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form, if required by:

(i) §260.303 of this chapter (relating to Requirements for ~~For~~] Authorization to Purchase or Lease an Adaptive Aid);

(ii) §260.317 of this chapter (relating to Requesting Authorization to Purchase a Minor Home Modification that Costs Less than $1,000); or

(iii) §260.319 of this chapter (relating to Requesting Authorization to Purchase a Minor Home Modification that Costs $1,000 or More);

(N) the HHSC Provider Agency Model Service Backup Plan form, if required by §260.213 of this chapter;

(O) the HHSC Specialized Nursing Certification form, if required by §260.347 of this chapter (relating to Nursing);

(P) if a non-waiver resource is identified on the HHSC Non-Waiver Services form:

(i) documentation to demonstrate that a service comparable to a DBMD Program service available from the non-waiver resource has been exhausted; or

(ii) documentation to explain why a service comparable to a DBMD Program service offered by the non-waiver resource is not provided to the individual by the non-waiver resource;

(Q) the HHSC Transition Assistance Services (TAS) Assessment and Authorization form, if required by subsection (f)(2) of this section; and

(R) the individual transportation plan, if required by subsection (k)(2)(J)(i) of this section; and

(2) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC, the enrollment IPP, and, if completed, the individual transportation plan to the FMSA.

(m) No later than five business days after receiving a written notice from HHSC approving or denying an individual's request for enrollment, the program provider must notify the individual or LAR of HHSC's decision. If HHSC:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services and CFC services as described on the IPC; or

(2) denies the request for enrollment, the program provider must send the individual or LAR a copy of HHSC's written notice of denial.

(n) A program provider must not provide a DBMD Program service or CFC service to an individual before HHSC notifies the program provider, in accordance with §260.69(d)(1) of this division (relating to HHSC's Review of Request for Enrollment), that the individual's request for enrollment into the DBMD Program has been approved. If a program provider provides a DBMD Program service or CFC service to an individual before the effective date of the individual's enrollment IPC authorized by HHSC, HHSC does not reimburse the program provider for those services.

(o) If HHSC notifies a program provider that an individual's request for enrollment is approved, the case manager must comply with §260.69(d)(2) of this subchapter.

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

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SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

26 TAC §260.219

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§260.219. Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a program provider, service provider, staff person, volunteer, or controlling person knows or suspects that an individual is being or has been abused, neglected, or exploited, the program provider must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation:

(1) for an individual receiving licensed assisted living, in accordance with Chapter 553 of this title (relating to Licensing Standards for Assisted Living Facilities); or

(2) for an individual who is not receiving licensed assisted living, to HHSC [~~DFPS~~] immediately, but not later than 24 hours, after having knowledge or suspicion by:

(A) calling the HHSC [~~DFPS~~] Abuse Hotline toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(B) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~].

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 18, 2024.

TRD-202404908
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 438-2910

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CHAPTER 364. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER D. CLEARINGHOUSE FOR PRIMARY CARE PROVIDERS SEEKING COLLABORATIVE PRACTICE

26 TAC §§364.51, 364.53, 364.55, 364.57

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Subchapter D, concerning Clearinghouse for Primary Care Providers Seeking Collaborative Practice consisting of §364.51, concerning Purpose and Authority; §364.53, concerning Definitions; §364.55, concerning Provider Registration; and §364.57, concerning Duties of the Department.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove rules which are no longer necessary. These rules applied to a Department of State Health Services (DSHS) program regarding a clearinghouse for primary care providers seeking collaborative practice. Texas Health and Safety Code §105.007, which covered the clearinghouse, was repealed by Senate Bill 970, 87th Legislature, Regular Session, 2021. Because this statute was repealed, these rules are no longer needed. Removing unnecessary and outdated rules will increase clarity in the Texas Administrative Code (TAC).

SECTION-BY-SECTION SUMMARY

The proposed repeal of §364.51, §364.53, §364.55, and §364.57 deletes obsolete rules in 26 TAC, Part 1, Chapter 364, Subchapter D.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

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

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal 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, HHSC Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Crystal Starkey, Deputy Executive Commissioner for Family Health 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 that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeal does not change any current requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or by email to FHSPublicComments@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 24R077" in the subject line.

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 Senate Bill 970 (87th Legislature, Regular Session, 2021), which repealed Texas Health and Safety Code §105.007, the corresponding statutory authority for 26 TAC, Part 1, Chapter 364, Subchapter D.

The repeals affect Texas Government Code §531.0055.

§364.51. Purpose and Authority.

§364.53. Definitions.

§364.55. Provider Registration.

§364.57. Duties of the Department.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404897
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (737) 867-7585

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER G. TEXAS GEOGRAPHIC [~~NATURAL RESOURCES~~] INFORMATION OFFICE (TxGIO) [~~SYSTEM (TNRIS)~~]

31 TAC §§353.100 - 353.103

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§353.100 - 353.103.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes to amend various sections of 31 TAC Chapter 353, Subchapter G in order to implement House Bill (HB) 2489 passed during the 88th Texas Legislative Session. HB 2489 renamed the "Texas Natural Resources Information Office (TNRIS)" to the "Texas Geographic Information Office (TxGIO)." The purpose of this bill was to better reflect the core mission and concept of the office, which these proposed rules would implement. The proposed changes amend the header for Subchapter G and text throughout the subchapter to reflect the new name.

Additionally, the TWDB proposes to make various changes to update terminology and procedures to match current agency and industry practice. The TWDB also proposes to make non-substantive changes for grammatical or clarity purposes.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

The header to Subchapter G is redesignated as "Texas Geographic Information Office (TxGIO)" to reflect the name change from HB 2489.

Section 353.100. Partnerships with Value-Added Service Providers.

Terminology throughout this rule is updated from "Texas Natural Resources Information System" or "TNRIS" to "Texas Geographic Information Office" or "TxGIO." The TWDB also proposes to amend the language related to establishing value-added partnerships and the associated written agreements to align with agency practice. The TWDB proposes to add detail in rule related to these partnerships, as required by Texas Water Code §16.021(b). The changes also include non-substantive grammatical changes.

Section 353.101. Other Partnerships.

Terminology throughout this rule is updated from "TNRIS" to "TxGIO."

Section 353.102. Definitions.

Terminology throughout this rule is updated from "Texas Natural Resources Information System" or "TNRIS" to "Texas Geographic Information Office" or "TxGIO."

The TWDB proposes to replace the definition of "High priority imagery and datasets (HPIDS)" with a new definition for "Strategic Mapping (StratMap) datasets" to align with the current agency and industry naming convention and practice. The TWDB proposes to add a definition for "Texas Geographic Information Office" in order to establish "TxGIO" as the abbreviation and to clarify that this same entity was formerly known as "Texas Natural Resources Information System" or "TNRIS." Finally, the TWDB proposes to amend the definition of "State Agency" to include those institutions of higher education that qualify as state agencies under the rule. The changes also include non-substantive grammatical changes.

Section 353.103. State Agency Geographic Information Standards.

Terminology throughout this rule is updated from "Texas Natural Resources Information System" or "TNRIS" to "Texas Geographic Information Office" or "TxGIO." Additionally, terminology is updated from "HPIDS datasets" to "StratMap datasets" to reflect the newly defined terms. The changes also include non-substantive grammatical changes.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments because the rule does not change any substantive requirements of other entities. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. As discussed in the fiscal note for HB 2489, it is assumed that any costs associated with the name change for TxGIO can be absorbed using existing resources.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation (HB 2489 (88R)).

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TxGIO partnerships and better reflects the core mission and concept of the office, which could lead to additional funding opportunities. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as involvement with TxGIO is voluntary and the changes are imposed by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TxGIO partnerships and better reflect the core mission and concept of the office.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.021. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TxGIO partnerships and better reflect the core mission and concept of the office. The proposed rule would substantially advance this stated purpose by aligning terminology and procedure with agency practice and by implementing HB 2489 (88R).

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that houses the Texas Geographic Information Office.

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

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st

day following publication in the *Texas Register.* Include "Chapter 353" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §16.021.

This rulemaking affects Texas Water Code, Chapter 16.

§353.100. Partnerships with Value-Added Service Providers.

(a) The executive administrator will [~~shall~~] identify value-added services that relate to the goals and responsibilities of the Texas Geographic Information Office (TxGIO) [~~Texas Natural Resources Information System (TNRIS)~~]. For those services identified, the executive administrator may enter partnerships with service providers [~~to post their contact information on the TNRIS web site~~].

[~~(b) Entities that provide services identified by the executive administrator shall request the partnership in writing. The written request shall include:~~]

[~~(1) the name and address of the entity and a contact person;~~]

[~~(2) the services performed by the entity;~~]

[~~(3) the number of years the entity has performed those services; and~~]

[~~(4) the internet address the entity would like the board to use as a hyperlink.~~]

(b) [~~(c)~~] The executive administrator will [~~shall~~] determine if the entity submitting a written request to form a partnership is an entity that provides services identified in subsection (a) of this section. If so, the executive administrator may [~~shall~~] enter a written agreement with the entity to form a partnership [~~post its name, contact information, and hyperlink on the TNRIS web site. The written agreement shall only be for one year but is renewable upon request~~].

(c) [~~(d)~~] The executive administrator must [~~shall~~] develop and implement, with board approval, a charge schedule for entities entering partnerships with the executive administrator [~~to post their information on the TNRIS web site. At least once every two years, the executive administrator shall review and obtain board approval of the charge schedule~~]. Monies collected from entities entering partnerships with the executive administrator must [~~shall~~] be used to improve access to TxGIO [~~TNRIS~~] information.

(d) The written agreement must be consistent with the agency's contracting policies and procedures and ethics policy.

(e) Partnerships may include:

(1) those with non-profit organizations to enhance services such as event collaboration and funding, data and service delivery, grant and charitable funding opportunities, resource sharing, advocacy, and emergency response; and

(2) those with for-profit companies for data acquisition, software development, software purchase, geospatial support and services, data storage, infrastructure development, and emergency response.

§353.101. Other Partnerships.

The board may authorize the executive administrator to enter other partnerships, on behalf of TxGIO [~~TNRIS~~] in order to:

(1) accept gifts and grants for TxGIO [~~TNRIS~~] through a nonprofit corporation. The acceptance of any gift or grant will be in compliance with Subchapter F of this chapter[~~,~~] (relating to The Relationship Between the Board and Donors); and

(2) accept volunteer labor.

§353.102. Definitions.

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

(1) [~~(2)~~] Geographic dataset--Digital data that [~~which~~] illustrate and describe some characteristic of the earth's surface or a region near the earth's surface. A geographic dataset employs a defined, earth-based coordinate system that [~~which~~] allows its use in a geographic information system. For the purposes of this rule, geospatial has the same meaning as geographic.

(2) [~~(3)~~] Geographic dataset enhancement--Substantial alteration of a geographic dataset that [~~which~~] increases its usefulness through the addition or modification of attribute (tabular) data fields, improvements in spatial accuracy, or extension of geographic coverage.

(3) [~~(1)~~] Geographic information system (GIS)--A system of computer hardware, software, and procedures used to store, analyze, and display geographic data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.

(4) Geospatial metadata--A description of the characteristics of a geographic dataset recorded in a standard format. Characteristics include data content, quality, purpose, condition, format, spatial coordinate system, availability, etc. The Federal Geographic Data Committee has defined a formal content standard for digital geospatial metadata for use by federal agencies.

(5) GIS map product--A geographic representation, in paper or electronic format, displaying features from one or more geographic datasets. Small scale images that are clearly intended only for graphic illustration within a larger publication are not considered to be GIS map products.

[~~(6) High priority imagery and datasets (HPIDS)--HPIDS are geographic datasets identified by the state Geographic Information Officer as high priority for acquisition or enhancement, developed or acquired by state agencies, and intended for sharing and integration into a single statewide compilation.~~]

(6) [~~(7)~~] State Agency--A department, commission, board, office, council, authority, or other agency, including [~~other than~~] an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

(7) [~~(8)~~] State Geographic Information Officer (GIO)--The official coordinating, establishing, supporting, and monitoring geographic information technology in Texas pursuant to Water Code §16.021(c). The GIO serves as deputy executive administrator [~~director~~] of the Texas Geographic Information Office (TxGIO) [~~Texas Natural Resources Information System (TNRIS)~~] within the Texas Water Development Board.

(8) Strategic Mapping (StratMap) datasets--Geographic datasets identified by the state Geographic Information Officer as high priority for acquisition or enhancement, developed or acquired by state agencies, including institutions of higher education, or other Texas government entities, and intended for sharing and integration into a single statewide compilation.

(9) Texas Geographic Information Office--TxGIO, formerly known as Texas Natural Resources Information System (TNRIS).

§353.103. State Agency Geographic Information Standards.

(a) Applicability. All users and developers of geographic datasets and geographic information systems in state agencies must comply with the technical standards specified in this section. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Texas Occupations Code, Chapter 1071) are exempt from these standards.

(b) Implementation guidance. Pursuant to Water Code §16.021(c), the GIO provides guidance to the Executive Administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the GIO to the department relates to technology standards developed by the department for geographic datasets pursuant to Water Code §16.021(e)(4).

(c) Geographic Information Standards.

(1) Geographic dataset acquisition and development.

(A) Standard. An agency planning to acquire, develop, or enhance a geographic dataset that may correspond to a StratMap [~~an HPIDS~~] dataset must [~~shall~~] coordinate such activity with the GIO to determine potential use of the StratMap contracts [~~HPIDS master contract~~].

(B) Procurement of public domain geographic datasets. An agency that procures a copy of a federal or other public domain geographic dataset must [~~shall~~] make the dataset available to TxGIO [~~the Texas Natural Resources Information System (TNRIS)~~]. TxGIO [~~TNRIS~~] will make these datasets available to other agencies, institutions of higher education, and to the public.

(2) Geographic dataset exchange: Data format. An agency that originates or adds data content to a non-proprietary geographic dataset and distributes the dataset to another state agency, institution of higher education, or the public must make the dataset available in at least one digital format that is recognized by the most commonly used geographic information systems. This requirement does not preclude the agency from offering the dataset in other data formats. The GIO provides guidance on acceptable formats for data exchange.

(3) Geographic dataset documentation.

(A) Preparation. An agency must [~~shall~~] prepare documentation for each geographic dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to another state agency, institution of higher education, or the public.

(B) Statement of Purpose. Documentation must include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset that some users may be inclined to make, the dataset disclaimer must specifically warn against those uses.

(C) Format. This documentation must be in a geospatial metadata format specified by the GIO.

(D) Delivery. In responding to a request for a geographic dataset, an agency must [~~shall~~] provide the requestor a copy of the documentation.

(4) GIS map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, must include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer must clearly state that the map is not a survey product.

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 21, 2024.

TRD-202404932
Alexis Lorick
Assistant General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-2776

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 89. ADVISORY COMMITTEES

40 TAC §§89.1 - 89.3, 89.5

The Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, and all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with now repealed Texas Government Code §531.0201 and §531.02011. Pursuant to §531.0011, references to DADS regarding functions transferred under now repealed §531.0201 and §531.02011 are now references to HHSC. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1.

Therefore, the Executive Commissioner of HHSC proposes the repeal of Chapter 89, §89.1, concerning Definitions, §89.2, concerning Authorization and General Provisions, §89.3, concerning Aging and Disability Resource Center Advisory Committee, and §89.5, concerning Foster Grandparent Program Advisory Councils.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015, transferred the Aging and Disability Resource Center and Foster Grandparent Program advisory committees to HHSC.

The rules related to the Aging and Disability Resource Center Advisory Committee and the Foster Grandparent Program Advisory Councils are being repealed because there is either no statutory requirement for the committees or the purpose of the committees are being met in other ways.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §89.1 deletes the rule because definitions for HHSC advisory committees exist in 1 TAC §351.801.

The proposed repeal of §89.2 deletes the rule because the authorization and general provisions for HHSC advisory committees exist in 1 TAC §351.801.

The proposed repeal of §89.3 deletes the rule because there is no statutory requirement for the committee and the purpose of the committee is being met in other ways.

The proposed repeal of §89.5 deletes the rule because there is no statutory requirement for the committee and the purpose of the committee is being met in other ways.

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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be repealed.

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

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 repeals abolish two advisory committees and do not impose any new requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 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 24R022" in the subject line.

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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§89.1. Definitions.

§89.2. Authorization and General Provisions.

§89.3. Aging and Disability Resource Center Advisory Committee.

§89.5. Foster Grandparent Program Advisory Councils.

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 21, 2024.

TRD-202404918
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 1, 2024
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