

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Office of the Attorney General

### Title 1, Part 3

The Office of the Attorney General of Texas (OAG) files this notice of its intent to review Chapter 63, concerning Public Information, in accordance with Texas Government Code §2001.039. An assessment will be made by the OAG as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the OAG. Comments on the review may be submitted electronically to the OAG's Open Records Division by email to [openrecordsassistance@oag.texas.gov](mailto:openrecordsassistance@oag.texas.gov) or by mail to Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments must be received within 30 days after the publication of this rule review notice to be considered.

TRD-202405474

Justin Gordon

General Counsel

Office of the Attorney General

Filed: November 8, 2024



Texas Department of Licensing and Regulation

### Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

#### Rule Chapters Under Review

Chapter 76, Water Well Drillers and Water Well Pump Installers

Chapter 84, Driver Education and Safety

Chapter 85, Vehicle Storage Facilities

Chapter 86, Vehicle Towing and Booting

Chapter 91, Dog or Cat Breeders Program

Chapter 100, General Provisions for Health-Related Programs

Chapter 110, Athletic Trainers

Chapter 111, Speech-Language Pathologists and Audiologists

Chapter 112, Hearing Instrument Fitters and Dispensers

Chapter 114, Orthotists and Prosthetists

Chapter 115, Midwives

Chapter 116, Dietitians

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

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

No changes to the rules in these chapters are being proposed at this time. If the Department determines that changes to the rules are necessary as a result of this rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation, the Department's governing body, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202405500

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Filed: November 13, 2024



Texas Department of Insurance

### Title 28, Part 1

The Texas Department of Insurance (TDI), under Texas Government Code §2001.039, will review and consider for re-adoption the following chapters of 28 Texas Administrative Code Part 1:

- Chapter 5, Property and Casualty Insurance;
- Chapter 6, Captive Insurance;
- Chapter 7, Corporate and Financial Regulation;
- Chapter 9, Title Insurance;

- Chapter 13, Miscellaneous Insurers and Other Regulated Entities;
- Chapter 19, Licensing and Regulation of Insurance Professionals;
- Chapter 21, Trade Practices;
- Chapter 22, Privacy;
- Chapter 25, Insurance Premium Finance;
- Chapter 26, Employer-Related Health Benefit Plan Regulations;
- Chapter 28, Supervision and Conservation;
- Chapter 33, Continuing Care Providers; and
- Chapter 34, State Fire Marshal.

TDI will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed in a separate rulemaking document and published in the *Texas Register* under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TDI will consider any written comments on the rule review that are received by TDI no later than 5:00 p.m., central time, on December 23, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

TRD-202405471  
 Jessica Barta  
 General Counsel  
 Texas Department of Insurance  
 Filed: November 8, 2024



## Adopted Rule Reviews

Texas Health and Human Services Commission

### Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

#### Chapter 354, Medicaid Health Services

Notice of the review of this chapter was published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3937). HHSC received four comments concerning this chapter. A summary of comments and HHSC's responses follows.

**Comment:** One commenter recommended amending the rules to allow physician assistants (PAs) prescriptive signing authority to prevent backlog due to having to wait for the signature of the attending physician. The commenter also expressed that it would be helpful to facilitate care more promptly and prevent any potential delay of care for patients. The commenter did not reference a specific rule section within chapter 354, and HHSC believes the commenter is generally referring to the prescriptive signing authority of PAs.

**Response:** HHSC acknowledges the feedback and will consider the commenter's recommendation in a future rule making project.

**Comment:** One commenter expressed support of amendments to allow advanced practice nurses (APRNs) and physician assistants (PAs) to sign physical therapy orders. The commenter did not reference a specific rule section within chapter 354, and HHSC believes the commenter is referring to §354.1291, Physical Therapists' Services which

requires a physician prescription for physical therapy services covered by Texas Medicaid.

**Response:** HHSC thanks the commenter for their feedback and will consider the commenter's recommendation in a future rule making project.

**Comment:** One commenter wrote on behalf of three associations suggesting updates to §354.1291 to bring the rule in alignment with recent federal changes and other rule adoptions by HHSC. The commenter asserted there is a conflict between subsection (a)(5)(C) of §354.1039, relating to Benefits and Limitations of Home Health Services, and §354.1291.

**Response:** HHSC disagrees that a conflict exists. The provisions in §354.1291 apply generally to physical therapy services and currently require a physician prescription in subsection (b)(4). The provisions in §354.1039(a)(5)(C) apply specifically to physical therapy services provided as a home health benefit. These provisions were amended in 2022 to reflect that PAs, nurse practitioners (NPs) and clinical nurse specialists (CNSs) are allowed to order physical therapy when provided as a home health benefit, consistent with federal Medicaid regulations.

HHSC will consider the commenter's suggestion to amend §354.1291 in a future rulemaking project.

**Comment:** One commenter suggested that HHSC amend rule language in §354.1291(b) to allow prescriptive authority to APRNs and PAs for physical therapy services to align with previous rule changes to §354.1039(a)(5)(C) which allows physician assistants (PAs), nurse practitioners (NPs) and clinical nurse specialists (CNSs) to order physical therapy as a home health benefit, in addition to physicians. The commenter further provided that state delegation laws and federal legislation have changed while §354.1291 remains outdated and potentially increases healthcare costs for vulnerable patients in Texas. The commenter expressed the requirement of a physician signature for physical therapy services paperwork to initiate therapy creates delays within the healthcare system and is burdensome.

**Response:** HHSC thanks the commenter for their feedback and will consider the commenter's recommendation to amend the physical therapy rules in a future rule making project.

HHSC has reviewed Chapter 354 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 354 except for:

- §354.1151, Freedom of Choice;
- §354.1153, Subrogation;
- §354.1155, Confidentiality of Information;
- §354.1157, Potential Fraud, Program Abuse, and Other Misutilization;
- §354.1159, Utilization Review;
- §354.1351, Coordinated Care Pilot Project;
- §354.1416, Eligibility Criteria; and
- §354.1417, Definitions for Wellness Services

The repeals identified by HHSC in the rule review and any amendments, if applicable, to Chapter 354 will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 354 as required by the Texas Government Code §2001.039.

TRD-202405473  
Jessica Miller  
Director, Rules Coordination Office  
Texas Health and Human Services Commission  
Filed: November 8, 2024



Department of State Health Services

**Title 25, Part 1**

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 228, Retail Food Establishments

Notice of the review of this chapter was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 7059). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 228 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 228. Any amendments, if applicable, to Chapter 228 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 228 as required by Texas Government Code §2001.039.

TRD-202405370  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: November 7, 2024



Texas Commission on Environmental Quality

**Title 30, Part 1**

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 40, Alternative Dispute Resolution Procedure, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a

state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3938).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 40 implement TGC, Chapter 2009, Alternative Dispute Resolution (ADR) for Use by Governmental Bodies ("Governmental Dispute Resolution Act," enacted 1997). TGC, §2009.051 authorizes each governmental body to develop and use ADR (primarily mediation) procedures, and further provides that if an agency that is subject to TGC, Chapter 2001, adopts an ADR procedure, it may do so by rule. TCEQ is subject to TGC, Chapter 2001, also known as the Administrative Procedure Act. TGC, §2009.002 provides that disputes before governmental bodies are to be resolved as fairly and *expeditiously* as possible and that each governmental body support this policy by developing and using ADR procedures in appropriate aspects of the governmental body's operations and programs. TGC, Chapter 2009 not only authorizes each agency to adopt its own ADR procedures but encourages agencies to do so. TCEQ's policy is to provide ADR/mediation opportunities to those persons and entities who interact with TCEQ in the commission's daily operations. Most of the ADR/mediation matters involve permit applications subject to an opportunity for a contested case hearing under TGC, Chapter 2001 and the rules of the commission. The readoption of the rules in Chapter 40 support this policy by administering and providing procedural framework for the ADR program at TCEQ, which continues to offer the public and regulated community an efficient, less costly and time-consuming alternative to the contested case process.

**Public Comment**

The public comment period closed on July 1, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 40 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202405417  
Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: November 8, 2024

