

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 14. ~~[PERISHABLE COMMODITIES]~~ HANDLING AND MARKETING OF PERISHABLE COMMODITIES ~~[PROGRAM]~~

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Chapter 14 (Perishable Commodities Handling and Marketing Program), Subchapter A (General Provisions), §14.1 (Definitions), §14.3 (Fees), and §14.4 (Cancellation of License); Subchapter B (Produce Recovery Fund Claims), §14.10 (Claims Against the Fund), §14.11 (Determination on Claims by the Department), §14.12 (Filing of Notice of Protest; Appeal to the Board), §14.13 (Payment of Claims from the Fund), and §14.14 (Reimbursement to the Fund); and Subchapter C (Produce Recovery Fund Board), §14.20 (Purpose and Scope), §14.21 (Duties of the Board and the Department), §14.22 (Meetings), §14.23 (Conduct of Hearings of the Produce Recovery Fund Board), §14.24 (The Board's Final Determination), and §14.25 (Motion for Rehearing).

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

In accordance with Texas Agriculture Code (Code), §103.004 and §103.012, the Produce Recovery Fund Board (Board) is required to advise the Department in its rulemaking capacity under Chapter 103 of the Texas Agriculture Code (Code). Chapter 103 governs the Board and payments from the Produce Recovery Fund pursuant to claims against license holders and persons requiring to be licensed as handlers of perishable commodities under Chapter 101 of the Code.

The Department presented the proposed amendments to the Board at its open meeting on November 15, 2023. The Board discussed and approved the proposed amendments by a unanimous vote.

The proposed amendments replace the current title of this chapter with "Handling and Marketing of Perishable Commodities" for consistency with the name of the Department's related program and the title of Chapter 101 of the Code.

The proposed amendments to §14.1 include a definition for the "Administrative Procedure Act" to account for its frequency in this chapter, remove a definition for "agent" due to its infrequency in this chapter, update a reference in the definition for the "Open

Meetings Act," add language to the definition for "claim" to specify against whom claims can be filed, and add a citation to the Code to the definition of "perishable commodity" to denote the statutory source of its definition.

The proposed amendments to §14.3 add language specifying those agents who require identification cards.

The proposed amendments to §14.4 specify a reference to the Department's general rules of procedure outlines in Chapter 1, Subchapter A of this title and change a reference to Chapter 2001 of the Texas Government Code to account for its proposed definition in §14.1.

The proposed amendments to §14.10 remove subsection (e) to become new subsection (d) §14.10 as its provisions fit more appropriately with those of §14.14, remove an outdated provision addressing claims prior to September 1, 2009, remove unnecessary language precluding the filing of out-of-state claims, and add a reference to §14.3 to specify claim-filing fees.

The proposed amendments to §14.11 change references to this chapter from "title" to "chapter," as the latter term is generally used throughout Title 4, update a reference to Chapter 1, Subchapter A of this title, change "recommendation" to "proposal for decision" as the former is used throughout this chapter and Chapter 1, Subchapter A of this title, make "Deputy Commissioner" lower-case as "Commissioner" is made lower-case throughout this chapter, and replace general references to "agency" with "department."

The proposed amendments to §14.12 change the term "person" to "party" as the former is used within the context of a hearing and in Chapter 103 of the Code, make "proposal for decision" lower-case to be the same as its occurrences in the Department's rules of procedure in Chapter 1, Subchapter A of this title and Chapter 2001 of the Texas Government Code (the Administrative Procedure Act), and replace general references to "agency" with "department."

The proposed amendments to §14.13 remove an outdated subsection outlining payments for claims prior to September 1, 2009; remove an obsolete subsection limiting total payments on claims against a single entity to \$85,000 as its statutory analogue, former Subsection 103.008(c) of the Code, was removed in 2009; and remove a reference to its restrictions on claim payments and replace it with the applicable statutory authority in Chapter 103 of the Code.

The proposed amendments to §14.14 add subsection (e) of §14.10 as new subsection (d) as its provisions fit more appropriately with those of §14.14 and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.20 update a reference to Chapter 1, Subchapter A of this title.

The proposed amendments to §14.22 remove unnecessary language addressing requirements of the Open Meetings Act and remove an incorrect provision on notice of Board meetings being published in the *Texas Register*.

The proposed amendments to §14.23 update Department contact information for prehearing motions and exhibit requests, specify that requests to the Department for hearing-related information must be written, and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.25 require motions for rehearing to be sent to opposing parties and Board rulings on these motions to be made in accordance with Section 2001.146 of the Texas Government Code and update Department contact information.

In addition, "Board," "Fund," and "Chairman" are made lowercase throughout these rules to align with their occurrences in Chapter 103 of the Code. Likewise, "licensee" and "complaining party" are changed to "license holder" and "aggrieved party" throughout these rules because the latter terms are used in Chapter 103.

Also, editorial changes are made throughout these rules to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Philip Wright, the Administrator for Regulatory Affairs, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering them.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be increased consumer protection due to updates to and improved readability of the chapter. Mr. Wright has also determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect:

- (1) they will not create or eliminate a government program;
- (2) their implementation will not require the creation or elimination of existing employee positions;

(3) their implementation will not require an increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) they will not create a new regulation;

(6) they will not expand, limit, or repeal an existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the state's economy.

Comments on this proposal may be submitted by mail to John "Chris" Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to chris.gee@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

The amendments are proposed under the Department's authority in Section 12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rule to administer its powers and duties under the Code; such powers and duties include Code, Section 101.006, the requirement that the Department to set fees for licensure to handle perishable commodities by rule; Code, Section 101.010, which requires the Department to set fees for identification cards for agents of license holders who either transport or buy perishable commodities; Code, Section 103.005, which also requires the Department to set fees for filing claims against the Produce Recovery Fund (Fund); Code, Section 103.009, which further requires the Department to issue orders canceling licenses and to deny issuing new licenses or renewing licenses for license holders or those required to be licensed to handle perishable commodities who, following payments from the Fund against them, neither pays nor agrees to pay either the Fund or the aggrieved party; Code, Section 103.011, which requires the Department to set an annual fee for those licensed under Code, Chapter 101; and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code (Code), Chapters 101[;] and 103, and Chapter 1, Subchapter A of this title (relating to [the] General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Procedure Act--The Texas Government Code, Chapter 2001 [~~Agent--An employee authorized to act for and on behalf of a licensee as a buying agent and/or a transporting agent~~].

(2) (No change.)

(3) Citrus fruit [~~Fruit~~]~~--Any fruit belonging to the genus Citrus, Poncirus, Microcitrus, Eremocitrus, or Fortunella, including, grapefruit, oranges, lemons, limes, and tangerines.~~

(4) Claim--A sworn complaint accompanied by the prescribed fee alleging a loss or damages occurred as a result of a violation of the terms or conditions of a contract involving the sale of perishable

commodities grown in Texas by a license holder or person required to be licensed.

(5) License holder [Licensee]--A person who holds a license issued under the [Texas Agriculture] Code, Chapter 101.

(6) Open Meetings Act--The [Texas Open Meetings Act,] Texas Government Code, Chapter 551.

(7) Perishable commodity [Commodity]--As defined in the Code, §101.001, fresh [Fresh] produce grown in Texas and generally considered a perishable vegetable or fruit.

§14.2. Citrus Proof of Ownership.

A license holder [Licensee] or a packer, processor, warehouseman or transporter may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish proof of ownership on a form approved by the department; except for citrus fruit being transported from the farm or grove to market or the place of first processing by the producer of the citrus fruit operating the producer's vehicle or by an employee of the producer operating a vehicle owned by the producer.

§14.3. Fees.

(a) License and ~~[registration]~~ identification card fees.

(1) (No change.)

(2) The fee for each identification card for transporting and buying agents is \$30.

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

§14.4. Cancellation of License.

If an award and payment is made from the fund [Fund] and the license holder [Licensee], or person required to be licensed, fails to reimburse and/or fails to agree in writing to reimburse the fund [Fund] and/or the aggrieved [complaining] party [to the ease in accordance with the provisions of this chapter, the department shall initiate proceedings], after 90 days, the department shall initiate proceedings [of failure to reimburse and/or failure to agree in writing to reimburse the Produce Recovery Fund,] to cancel the license holder's [Licensee's] license in accordance with the Texas Agriculture Code (Code), §103.009. Such proceedings shall be conducted in accordance with the [Texas Agriculture] Code, §12.032, the Administrative Procedure Act, [Texas Government Code, Chapter 2001], and the department's General Rules of Practice and Procedure found at Chapter 1, Subchapter A of this title (relating to General Practice and Procedure) [rules of procedure].

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 November 22, 2024.

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Susan Maldonado

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 463-6591



SUBCHAPTER B. PRODUCE RECOVERY

FUND CLAIMS

4 TAC §§14.10 - 14.14

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Code, Section 103.009, which requires the Department to set schedules for reimbursements to the Fund and payments to aggrieved parties following Department payments from the Fund and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.10. Claims Against the Fund.

(a) What claims can be filed. Only claims against a license holder [Licensee] or a person required to be licensed for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities grown in Texas may be filed. ~~[The following claims may not be accepted:]~~

~~[(1) Claims for perishable commodities grown out-of-state.]~~

~~(b) [(2)] Claims filed under the Perishable Agriculture Commodities Act [(PACA)] that are accepted as formal complaints and adjudicated by the United States Department of Agriculture, or claims for which an aggrieved party [a complainant] has filed suit in a court of competent jurisdiction shall not be accepted.~~

~~[(b) Who may file. A person who suffers a loss or damages due to the violation of the terms or conditions of a contract by a licensee or a person required to be licensed may file a claim against the Fund.]~~

(c) How to file. A claim shall be filed with the department on a prescribed complaint form and shall be accompanied by the [prescribed] fee required by §14.3 of this chapter (relating to Fees). The date of postmark, if mailed, or the date the complaint and fee are received by the department, if hand-delivered, shall be the date the claim is deemed filed.

(d) Statute of Limitations. A claim shall be barred if it is filed later than [one year from the date the violation of the terms or conditions of a contract occurred. This limitation applies to claims that are based on violations that occurred prior to September 1, 2009. Claims based on violations that occurred on or after September 1, 2009 shall be barred if it is filed later than] two years from the date the payment was due.

~~[(e) Respondent's Option to Pay. If a recommendation for payment from the Fund is made by a department hearing officer or a payment is awarded in a final department or Board determination, the respondent may pay the amount found to be due directly to complainant rather than have that payment made by the Fund. If direct payment is made, parties shall notify the department in writing.]~~

§14.11. Determination on Claims by the Department.

(a) Once a claim is filed in accordance with §14.10 of this chapter [title] (relating to Claims Against the Fund), the department shall investigate the claim and may conduct a hearing to determine the amount due the aggrieved party. All hearings shall be conducted by a department hearing officer in accordance with the provisions of the Administrative Procedure Act and [the department's General Rules of Practice and Procedure found at] Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]).

(b) (No change.)

(c) Parties may protest the proposal for decision [recommendation] made by the department hearing officer by filing

a Notice of Protest in accordance with §14.12 of this chapter [title] (relating to Filing of Notice of Protest; Appeal to the Board). If no protest is filed, the case will be forwarded to the deputy commissioner [Deputy Commissioner] for a final [agency] determination.

(d) Parties may also protest the department's [agency's] final determination by filing a Notice of Protest in accordance with §14.12 of this chapter [title (relating to Filing of Notice of Protest; Appeal to the Board)].

(e) (No change.)

§14.12. Filing of Notice of Protest; Appeal to the Board.

(a) A party [person] who disputes the recommendation of the department's hearing officer or the department's final determination on a claim shall file a Notice of Protest with the [department. The notice shall be sent to the attention of the] Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the Notice of Protest shall be sent to the opposing party and/or a designated representative.

(b) A Notice of Protest shall be in writing, state the [reason or] reasons for the protest, and request a hearing before the board [Board].

(c) A Notice of Protest must be received by the department within 15 days from the date of the receipt of the hearing officer's proposal for decision [Proposal for Decision] on the claim, or if an appeal from the final department [agency] determination, within 20 days from the date the final department [agency] determination was mailed. A Notice of Protest [The department shall accept notices of protest] filed by fax shall be accepted if it [facsimile transmission; as long as the facsimile] is received no later than 5:00 [5] p.m. on the due date. [Oral notices of protest shall not be accepted.]

(d) If a Notice of Protest is received on a claim, the claim shall be referred to the board [Board] for hearing.

§14.13. Payment of Claims from the Fund.

[(a) The following payments of claims shall apply for a claim based on a violation occurring prior to September 1, 2009.]

[(1) Claims of \$2000 or less may be paid in full.]

[(2) Claims of more than \$2000 may be paid in the following manner:]

[(A) If the claim was filed on or after September 1, 1999, but prior to September 1, 2009, the first \$2000 plus no more than 70% of the amount in excess of \$2,000, may be paid.]

[(B) If the claim was filed prior to September 1, 1999, the first \$1,000 plus no more than 60% of the amount in excess of \$1000, may be paid.]

[(3) Claims arising from Same Contract. Total payment for claims arising from the same contract shall not exceed \$35,000.]

[(4) Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed \$85,000 in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph, the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.]

[(b) Payment [The following payments] of claims from the fund shall be subject to the following: [apply for a claim based on a violation occurring on or after September 1, 2009.]

(1) (No change.)

(2) [Claims Arising from Same Contract.] Total payment for claims arising from the same contract shall not exceed \$50,000.

[(3) Claims Against a Single Licensee or a person required to be licensed. Total payment for claims against a single licensee or a person required to be licensed shall not exceed \$85,000 in any one calendar year.]

(3) [(4)] Claims against a person who is not licensed. Payment for claims against a person who is not licensed at the time the claim was filed shall not exceed 80% of the total recovery [claim].

(4) [(5)] Claims shall be paid in accordance with the order that a final determination is made by the department or the board [Board]. In cases when a claim cannot be paid in full due to the restrictions of the Texas Agriculture Code, §103.008(c) [this subsection], the aggrieved party [claimant] shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the fund [Fund] during the next calendar year.

§14.14. Reimbursement to the Fund.

(a) If the department pays a claim [against a licensee, or a person required to be licensed,] from the fund [Fund]:

(1) Upon issuance of a final determination from the department or the board [Board], the license holder [licensee] shall reimburse the total amount paid by the fund [Fund] or agree in writing to reimburse the fund [Fund] the total amount paid by the fund [Fund]. If a person is not licensed on the date the transaction forming the basis of the claim occurred but is required to be licensed, the person shall pay the fund one and one-half times the amount of the claim paid by the fund [Fund], upon issuance of a final determination from the department or the board [Board]. Payment to the fund [Fund] is due in full within 30 days of the date of the final [agency] determination. If the license holder [licensee], or a person required to be licensed, cannot pay the full amount owed to the fund [Fund] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the fund pursuant to [amount owed to the Fund on an amortization schedule set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%.

(2) After fully reimbursing the fund [Fund] for payments made to the aggrieved party [claimant], the license holder [licensee], or a person required to be licensed, shall immediately pay or agree to pay the claimant any remaining amount due that party (balance not received from the fund [Fund]). If the license holder [licensee], or a person required to be licensed, cannot pay the full amount to the aggrieved party [claimant] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the amount owed to the aggrieved party pursuant to [claimant on an amortization schedule as set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%, after the fund [Fund] is fully reimbursed.

(3) Payment [Amortization] Schedule [for Reimbursement to the Produce Recovery Fund and Claimant]. Claims of:

(A) - (D) (No change.)

(b) Monthly installments to the fund [Fund] are due on the last business [working] day of the month and payable to TDA, P.O. Box 12847, Austin, Texas 78711. The department may make exceptions on payment schedules for good cause shown.

(c) If a license holder [licensee], or a person required to be licensed, owes money to the fund [Fund] at the time the license holder [licensee], or a person required to be licensed, makes a claim against the fund [Fund], the department shall offset the amount owed to the fund [Fund] from the amount determined to be payable from the fund [Fund].

(d) Respondent's Option to Pay. The respondent may pay the amount found to be directly to the aggrieved party rather than have the payment made by the fund. If direct payment is made, the parties shall notify the department in writing.

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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Susan Maldonado
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Texas Department of Agriculture
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For further information, please call: (512) 463-6591



SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §§14.20 - 14.26

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Section 103.012 of the Texas Agriculture Code, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.20. *Purpose and Scope.*

The purpose of this subchapter [these sections] is to provide [operating] procedures for the board [Produce Recovery Fund Board (the Board)], and to provide procedures for the conduct and determination of Board decisions], so that hearings and other proceedings before the Board may be conducted in a uniform and efficient manner. Unless otherwise provided, these rules are designed to supplement procedures established in Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]), and the Administrative Procedure Act and should be read together with those procedures.

§14.21. *Duties of the Board and the Department.*

(a) The board [Board] shall:

(1) advise the department on all matters relating to the fund [Fund], including the fund's [Fund's] budget and revenues necessary to accomplish the purposes of the fund [Fund];

(2) advise the department on the adoption of rules relating to the payment of claims from the fund [Fund] and to the administration of the fund [Fund]; and

(3) conduct hearings on claims on which a Notice of Protest has been filed with the department.

(b) The department shall:

(1) administer the fund [Fund], including the collection of fees from license holders [licensees], or persons [a person] required to be licensed, which are to be deposited into the fund [Fund] in accordance with the Texas Agriculture Code (Code), Chapter 103;

(2) receive and process claims;

(3) conduct hearings on claims, when [where] appropriate, and issue determinations [an agency determination] on claims;

(4) refer claims to the board when a Notice of Protest is filed [Board, where appropriate];

(5) [where an award from the Fund is made,] process payment of claims in accordance with the Code, Chapter 103, when an award from the fund is made;

(6) [where appropriate,] seek reimbursement of payments made from the fund when appropriate [Fund]; and

(7) provide administrative support to the board [Board], including posting notices of board [Board] meetings, making arrangements for board [Board] meetings, and preparing and mailing [ef] notices of hearing and other correspondence to parties on cases heard by the board [Board].

§14.22. *Meetings.*

(a) Location, conduct and time of meetings. The board [Board] shall meet in Austin, or other places designated by the board [Board], on dates to be determined by the department with the advice of the board [Board], for the purpose of conducting hearings on matters appealed to the board [Board] and/or for the purpose of conducting business authorized by the Texas Agriculture Code, Chapter 103. Meetings will be conducted in accordance with the Open Meetings Act.

(b) Notice of meetings. Notice [A written notice] of the agenda, date, time and place of each [business] meeting [of the Board] and/or hearing of [conducted by] the board [Board,] shall be provided [published in the Texas Register] in accordance with the Open Meetings Act. [In cases of emergency or urgent public necessity, notice shall be given as authorized by the Open Meetings Act.]

(c) Chairman to preside. The chairman of the board [Board] shall preside over all meetings of the board [Board] and shall perform all duties delegated to the chairman [him or her] under this subchapter [these rules]. In the chairman's absence, the vice-chairman shall preside over all meetings of the board [Board], and shall perform all duties of the chairman under this subchapter [these rules]. The vice-chairman shall be selected by a majority of board [Board] members present at the time of selection.

(d) Public comment period. As part of its [business] meetings, the board [Board] shall [include a public comment period to] allow members of the public to [appear and provide] comment on matters within the jurisdiction of the board [Board]. This item will be included in the agenda of [published in the Texas Register for] the [business] meeting.

§14.23. *Conduct of Hearings of the Produce Recovery Fund Board.*

(a) Representation. Parties to proceedings before the board [Board] shall have a right to appear and may be represented by counsel, or any other designated person, and shall have a right to have witnesses appear to testify on their behalf.

(b) Review of Department Record and Presentation By Parties.

(1) The board [In hearing cases in which a Notice of Protest has been filed, the Board] shall conduct hearings to review cases for which a Notice of Protest has been filed and base its determination on the record of the hearing held before the department and any subsequent matters filed by parties to the case which are admitted into the record by the board [Board], including any exhibits accepted into the record at the hearing before the board [Board].

(2) The board [Board] may take additional testimony [of parties or other witnesses] and admit into the record any documentary

evidence that it deems necessary to clarify the record of the hearing before the department and/or aid the board [Board] in making its determination on the case.

(3) At the board's [Board's] discretion, any party may present oral testimony or argument [~~to the Board~~] by filing a written request with the board [Board ~~a written request to do so~~] at least five business [working] days prior to the hearing [~~day on which the Board is to consider the case~~]. The board [Board] may waive the five-day [~~five working day~~] requirement for good cause shown.

(c) Ruling on Objections, Motions; Filing of Motions.

(1) The board [Board] shall have the authority to rule on motions, on the admissibility of evidence, on objections, and on amendments to pleadings.

(2) A pre-hearing [Any] motion [~~relating to a pending proceeding~~] shall [~~unless made during a hearing,~~] be written, set forth under oath the relief or order sought and the specific reasons and grounds therefor, and be directed to the board [Board]. Any motion [~~including a motion for continuance~~] shall be filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and distributed to all interested parties, under a certificate of service, not less than seven business [working] days prior to the hearing [designated] date [~~that the matter is set to be heard by the Board~~]. The board [Board] may waive the seven-day [seven day] requirement for good cause shown. A reply to such motion may be filed by any other party to the proceeding. A pre-hearing motion [Pre-hearing motions] shall be ruled on by the chairman [Chairman] at the earliest time practicable, and a final determination [determinations] on any such motion [motions] shall be signed by the chairman [Chairman] on behalf of the board [Board].

(3) When necessary, in the judgment of the chairman [Chairman] and/or the board [Board], or upon request of a party, a hearing may be set to consider any motion. A request for hearing on a motion, or a request for hearing on a final determination issued in response to a motion shall be filed with the board [Board] no later than three business [working] days after receipt of the final determination by the requesting party.

(d) Exhibits.

(1) All exhibits admitted into the record of the hearing before the department and the [tape] recording of the hearing shall be tendered for admission into the record of the hearing before the board [Board]. All such exhibits shall be available to the [~~for inspection by~~] parties prior to the beginning of the hearing, and [~~are available prior to the hearing date~~] to any interested person or party prior to the hearing date upon filing of a written request to the Hearings Clerk [~~Deputy General Counsel, General Counsel Division, Texas Department of Agriculture~~].

(2) A [Each] party shall deliver to the other party any additional documents intended to be offered at the hearing at least three business [working] days prior to the hearing date [~~any documents in addition to those included in the record of the hearing before the department which the party intends to offer at the hearing before the Board~~].

(e) Recording the Hearing and Preparation of Transcript.

(1) All hearings before the board [Board] shall be [tape] recorded and [~~All tape recordings of hearings before the Board shall be~~] maintained by the General Counsel Division, Texas Department of Agriculture.

(2) Upon written request [~~and~~] and payment of any associated [~~the appropriate~~] cost [~~by any party~~], the department shall prepare a

copy of the [tape] recording of a hearing for any party [~~conducted by the Board~~].

(3) Upon written request and payment of any associated cost [~~of any party~~], the department shall prepare, or order the preparation of, a transcript of a hearing for any party [~~conducted by the Board~~]. The Board may assess the cost of the transcript to one or more parties.

(4) In the event a final decision of the board [Board] is appealed to the district court, the board [Board] may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the [Board] proceeding that is required to be transmitted to the reviewing court, as is specified by the board [Board].

§14.24. *The Board's Final Determination.*

(a) All final determinations of the board [Board] shall be in writing and shall set forth findings of fact and conclusions of law as required by the Administrative Procedure Act.

(b) Unless otherwise prohibited by statute or by this chapter, all final board [Board] determinations may be signed by the chairman [Chairman], on behalf of the board [Board]. In the event that the final decision of the board [Board] is not unanimous, the final determination may indicate that the vote was not unanimous, and may indicate those members dissenting.

(c) Except for good cause, the [The] Board's final determination shall be issued within 60 days of the closing of the record of the case [~~unless for good cause, the Board members hearing the case are not able to reconvene to deliberate on a case within the 60 day period after the closing of the record~~].

§14.25. *Motion for Rehearing.*

A motion for rehearing shall be governed by the Administrative Procedure Act, §§2001.145-2001.146. Communications regarding any such motion shall be directed to the board [Board], and filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the motion for rehearing shall [~~should also~~] be sent to the opposing party and/or designated representative. Board rulings on motions for rehearing shall [~~may~~] be made [~~by telephone, mail, or other suitable means of communication~~] in accordance with the Administrative Procedure Act, §2001.146. A final determination granting or denying a motion for rehearing may be signed by the chairman [Chairman] on behalf of the board [Board].

§14.26. *Appeals.*

All appeals from final board [Board] determinations shall be governed by the Administrative Procedure Act, Subchapter G [~~or other pertinent statute~~].

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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Susan Maldonado
General Counsel
Texas Department of Agriculture
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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§401.101 (Lottery Procurement Procedures), 401.102 (Protests of the Terms of a Formal Competitive Solicitation), 401.103 (Protests of Contract Award), 401.104 (Contract Monitoring Roles and Responsibilities), 401.153 (Qualifications for License), 401.158 (Suspension or Revocation of License), 401.160 (Standard Penalty Chart), 401.301 (General Definitions), 401.302 (Scratch Ticket Game Rules), 401.304 (Draw Game Rules (General)), 401.355 (Restricted Sales), and 401.501 (Lottery Security).

The proposed rule amendments are the result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, as well as the agency's recent review by the Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses issues identified as rulemaking gaps in the May 2024 Texas Sunset Advisory Commission Staff Report (Staff Report). Specifically, the Staff Report noted that there was "no clarification as to whether internet sales of lottery products are prohibited" (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and "no explanation of what it means for a person to 'engage in a business exclusively as a (lottery) sales agent' for purposes of licensure" (addressed in Rule 401.153(b)(13)).

The proposed rule amendments also clarify procurement procedures and the time period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the agency in procurements; update several definitions; update a provision in the scratch ticket game rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize claim processes; and update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The proposed amendments to Rule 401.101 clarify the rules governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by adding language that describes the process used for IFBs. The proposed amendments also clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

The proposed amendments to Rule 401.102 add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.103(g) clarify the time period a successful bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to a contract award resulting from a competitive solicitation. Also, the proposal adds language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.104 clarify that the agency may assign designated personnel to monitor contract compliance and facilitate historically underutilized business participation, in addition to the existing divisions within the agency that handle these matters.

The proposed amendments to Rule 401.153(b)(12) clarify that an application for a sales agent license will be denied if the applicant intends to sell lottery tickets via the internet, and the proposed amendments to Rule 401.153(b)(13) reiterate the prohibition in the State Lottery Act that an application for a sales agent license will be denied if the applicant intends to engage in business exclusively as a Texas Lottery ticket sales agent (as defined in the proposed amendments). This change addresses gaps that were identified by the Staff Report.

The proposed amendments to Rule 401.153 also add a provision that, based upon consideration of the factors in Rule 401.160(g), the director may determine a person or organization whose license has been revoked, surrendered or denied is not eligible to apply for another license for one year.

The proposed amendments to Rule 401.158(b)(23) make it an express violation to require a purchaser to buy additional items when paying for lottery tickets with a debit card and the proposed amendments to Rule 401.158(b)(27) make it an express violation to sell lottery tickets over the internet.

The proposed amendments to Rule 401.160 update the penalty chart and correspond with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

The proposed amendments to Rule 401.301(1), (4), (51), and (55) make minor updates to multiple definitions to increase the clarity of those definitions. The proposed amendments also add a definition of "Present at the terminal" that was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the definition, in combination with the related proposed amendment to Rule 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

The proposed amendments to Rule 401.302(a)(1) add language from Rule 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The proposed amendments to Rule 401.302(e)(6) and (f)(2) update the rule by requiring all scratch ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.304(b)(3) add language that was deleted in a non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take place away from the terminal. The proposed amendments to Rule 401.304(d)(3) update the rule by requiring all draw ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.355(a) clarify that retailers shall not sell lottery tickets via the internet, a gap that was identified by the Staff Report, and the proposed amendments to Rule 401.355(b) update a cross-reference.

The proposed amendments to Rule 401.501 update the language regarding lottery security to state that several divisions of

the Commission are responsible for developing and maintaining security plans and procedures, including information security, gaming security, and facility security as required by the State Lottery Act to ensure the integrity and security of the lottery games, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

Angela Zgabay-Zgarba, Administration Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be greater clarity regarding agency procedures governing procurement.

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit includes a greater understanding of the Commission's rules and games by licensed lottery retailers and lottery players based on the removal of obsolete language and the addition of new, clarifying language; and addressing issues identified as rulemaking gaps in the Staff Report. The new rule language should lead to an increase in understanding and compliance.

Sergio Rey, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

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

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments do not expand or limit an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted

to Kyle Wolfe, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 45 days after publication of this proposal in the *Texas Register* to be considered. The Commission will also hold a public hearing to receive comments on this proposal at 1:00 p.m. on January 15, 2025, at 1801 Congress Ave., George H. W. Bush Building, 4th Floor, Board Room 4.300, Austin, TX, 78701.

SUBCHAPTER A. PROCUREMENT

16 TAC §§401.101 - 401.104

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.101. Lottery Procurement Procedures.

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

(e) Formal competitive solicitations.

(1) A formal competitive solicitation is a process conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(A) An IFB will be used when the agency is able to describe, by way of established specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price. For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids.

(B) - (C) (No change.)

(2) - (4) (No change.)

~~{(5) For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.}~~

(f) RFPs and IFBs [RFP].

(1) Submission of RFP. When an RFP is used by the agency, the RFP will contain, at a minimum, the following:

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

(C) the time and date proposals are due, and the location and person to whom they must ~~[are to]~~ be submitted;

(D) - (E) (No change.)

(2) Submission of IFB. When an IFB is used by the agency, a bidder will submit a bid in response to the solicitation. The IFB solicitation will contain, at a minimum, the following:

(A) A detailed description of the goods and/or services to be provided, and specific specifications for the goods or services to be procured;

(B) A description of the format bids must follow and the elements they must contain;

(C) The time and date bids are due, and the location and person to whom they must be submitted;

(D) an identification of the process to be utilized in evaluating bids; and

(E) a listing of the factors to be utilized in evaluating bids and awarding a purchase order. At a minimum, the factors should include:

(i) the bidder's price to provide the goods or services;

(ii) the probable quality of the offered goods or services;

(iii) the quality of the bidder's past performance in contracting with the Texas Lottery, with other state entities or with private sector entities;

(iv) the bidder's experience in providing the requested goods or services;

(v) the qualifications of the bidder's personnel; and,

(vi) whether the bidder performed the good faith effort required by the HUB subcontracting plan, as applicable.

(3) [(2)] Evaluation Process. The agency will, prior to the deadline for receipt of proposals or bids, develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee in evaluating the proposals or bids. All proposals or bids that are responsive to the procurement [RFP] will be reviewed by the evaluation committee. Part of the initial evaluation process may include an inspection trip to the proposer's facilities, and/or proposers may be requested to make an oral presentation to the committee. The evaluation committee may seek advice from consultants. If consultants are employed, they may be provided all information provided by the proposers or bidders. The evaluation committee will evaluate and score all proposals in accordance with the evaluation criteria.

(4) [(3)] Best and Final Offers (BAFO). With an RFP, the [The] agency may select top proposers, which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to their respective proposals to the agency through a BAFO process. During discussions between the proposers and the agency, no information from a competing proposal may be revealed by the agency to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and score the BAFO response together with the original proposal in accordance with the evaluation criteria.

(5) [(4)] Negotiation.

(A) RFP. If a BAFO process is not used, the agency will attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest scored

proposer. This process will be continued until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

(B) IFB. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.

(6) [(5)] Multiple Award. The agency may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services, where more than one vendor or contractor is needed to meet the agency's requirements for quantity, delivery, or service.

(g) - (i) (No change.)

§401.102. *Protests of the Terms of a Formal Competitive Solicitation.*

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

(e) The director of administration will review the protest, and the solicitation file, and will make a written determination of the protest, which may include canceling the solicitation. The director of administration's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director. The appeal must be filed electronically with the commission's general counsel by 5 p.m. the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(f) On appeal of the director of administration's determination, the executive director will review the protest, the solicitation file, any responses, and the director of administration's determination, including any reasoning that supports the determination. The executive director will then make a written determination of the appeal, which may include canceling the solicitation. The executive director's written determination will be served, by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement [correspondence,] will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed electronically with the commission's general counsel by 5 p.m. the next business day after issuance of the written determination. An appeal is considered timely if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(g) - (h) (No change.)

(i) The Texas Lottery Commission will make a written determination of the protest. To make its determination, the commission [Commission] will review:

(1) - (4) (No change.)

(5) The staff attorney's recommendation. The written determination on the protest may include a determination canceling the solicitation. The Texas Lottery Commission's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement [correspondence,] will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.

§401.103. *Protests of Contract Award.*

(a) (No change.)

(b) A protest of any contract award must be filed electronically with the commission's general counsel, by email to legal.input@lottery.state.tx.us, within 72 hours after receipt of notice of contract award. A copy of the protest must be delivered to the successful bidder or proposer at the same time that the protest or supplement is delivered to the agency. The protestant must include its email address with the protest. A protest is considered timely filed if it is electronically filed before the filing deadline. An electronically filed protest is deemed filed when transmitted to the protestant's electronic filing service provider. Unless otherwise requested by the commission, the protestant is not required to file a paper copy of its protest. For good cause shown by the protestant, the commission may allow an alternate form of filing. The electronically filed protest must be in a text-searchable PDF format. The protestant is solely responsible for ensuring its protest is complete and filed timely with the office of the general counsel and a copy is sent to the successful bidder or proposer. A protest not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel by electronic notice sent to the protestant's designated email address, or the email address identified for notices in the procurement response. A protestant may supplement its timely filed protest. The deadline to supplement is 5 p.m. central time, 10 calendar days after notice of contract award.

(c) In the event of a protest of a contract award, the successful bidder(s) or proposer(s) may file a written response electronically to the protest within 72 hours after the office of the general counsel's receipt of the protest or any supplemental filing. The successful bidder(s) or proposer(s) must include its email address with the response. A response is considered timely filed if it is electronically filed before the filing deadline. An electronically filed response is deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. The electronically filed response must be in a text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for ensuring the response is complete and filed timely with the office of the general counsel. Responses not filed timely will not be considered, and the successful bidder(s) or proposer(s) will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address, or the email address identified for notices in the procurement response.

(d) - (e) (No change.)

(f) The director of administration will review the protest, the contract award file, any responses, and will make a written determination of the protest, which may include canceling the award of the contract. The director of administration's written determination will be served, by facsimile or by email, on the protestant and the successful bidder(s) or proposer(s). Confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director [Executive Director]. The appeal must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(g) The successful bidder(s) or proposer(s) may file a response electronically to the appeal of a determination made by the director of administration or the executive director by 5 p.m. of the next business

day [Executive Director within 24 hours] after notice of the commission's receipt of the appeal. The successful bidder(s) or proposer(s) must include its email address with the response. A response is considered timely filed if it is electronically filed before the filing deadline. An electronically filed response is deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. Unless otherwise requested by the commission, the successful bidder(s) or proposer(s) is not required to file a paper copy of its response. The electronically filed response must be in text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for ensuring the response is complete and filed timely with the office of the general counsel. Responses not filed timely will not be considered, and the respondent will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address.

(h) On appeal of the director of administration's determination, the executive director will review the protest, the contract award file and responses, and the director of administration's determination, including any reasoning that supports the determination. The executive director [Executive Director] will then make a written determination of the protest, which may include abating the award of the contract. The executive director's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence [correspondence] will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(i) - (k) (No change.)

§401.104. *Contract Monitoring Roles and Responsibilities.*

The contract monitoring roles and responsibilities of agency internal audit staff (or contractor) and other inspection, investigative, or compliance staff are as follows:

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

(4) A division or divisions, or other designated personnel within the agency, [agency] will monitor and report to other appropriate agency divisions or units regarding contract compliance.

(5) A HUB coordinator and any other designated personnel [division] within the agency will assist the administering division or divisions and the contract management section in monitoring agency contracts in connection with applicable historically underutilized and minority business contract requirements.

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

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §§401.153, 40.158, 401.160

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.153. *Qualifications for License.*

(a) (No change.)

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) - (9) (No change.)

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act; [ø]

(11) is the subject of a license suspension or decision issued under Chapter 232, Family Code; [Code.]

(12) intends to sell lottery tickets via the internet; or

(13) intends to engage in business exclusively as a Texas Lottery ticket sales agent. For purposes of this section, an applicant "intends to engage in business exclusively as a Texas Lottery ticket sales agent" if the applicant does not sell any goods or services to the public other than Texas Lottery tickets.

(c) - (e) (No change.)

(f) Based upon consideration of the factors in §401.160(g) of this title (relating to Standard Penalty Chart), the director may determine a person or organization whose license has been revoked or surrendered, or whose application has been denied for reasons which would justify a revocation of an existing license, will not be eligible to apply for another license earlier than one year from the date of revocation, surrender, or denial.

§401.158. *Suspension or Revocation of License.*

(a) (No change.)

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) - (22) (No change.)

(23) licensee charges a fee for lottery ticket purchases using a debit card, requires an additional purchase with a debit card, and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.

(24) - (26) (No change.)

(27) licensee sells tickets over the telephone or internet, or via mail order sales; or [sales,] establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

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

(28) - (39) (No change.)

(40) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period (revocation only);

(41) licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account (revocation only); or

(42) (No change.)

§401.160. *Standard Penalty Chart.*

(a) - (f) (No change.)

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of License) and/or this section:

(1) - (8) (No change.)

(9) Penalties imposed for related offenses; [ø]

(10) Current employment status of any employee(s) that committed violation(s); or

(11) [(+0)] Any other mitigating or aggravating circumstances.

(h) Standard Penalty Chart.

Figure: 16 TAC §401.160(h)

[Figure: 16 TAC §401.160(h)]

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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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.301, 401.302, 401.304

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.301. *General Definitions.*

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

(1) Caption--The letters or other characters appearing below the play symbols in the play area of a ticket that verify the correctness of the play symbols.

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

(4) Claim form--The printed or electronic form authorized and provided by the commission that a claimant shall complete and submit to the commission when claiming a prize.

(5) - (34) (No change.)

(35) Present at the terminal--A player remains physically present at the terminal from the time the player's order for the purchase of draw game tickets is paid for and accepted by the retailer until the processing of the order is completed and the tickets are delivered to the player at the retailer terminal location.

(36) [(35)] Prize amounts--The amount of money payable to each share in a prize category, the annuitized future value of each share in a prize category, or the net present cash value of each share in a prize category for each draw game drawing. Prize amounts are calculated by dividing the prize category contribution, the annuitized future value of the prize category contribution, or the net present cash value of the prize category contribution by the number of shares determined for the prize category.

(37) [(36)] Prize breakage--The money which is left over from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the amount needed to pay a prize.

(38) [(37)] Prize category--The matching combinations of numbers and their corresponding prize levels as described in rules for the specific game being played.

(39) [(38)] Prize category contributions--Refers to contributions for each drawing to each prize category, including direct and indirect prize category contributions.

(40) [(39)] Prize fund--The monies allocated to be returned to players in winning tickets within a specific scratch ticket game.

(41) [(40)] Prize pool--In a draw game, the total amount of money available for prizes as a percentage of the total sales for the current draw period.

(42) [(41)] Prize structure--The number, value, prize payout percentage, and odds of winning prizes for an individual game as approved by the executive director.

(43) [(42)] Promotion--One or more events coordinated or conducted by the commission at retail sites, fairs, festivals and other appropriate venues, or in conjunction with one or more particular Texas Lottery games, to educate players about Texas Lottery products and/or sell Texas Lottery games through a retailer in specific markets to maximize Texas Lottery sales and statewide awareness.

(44) [(43)] Promotional drawing--A drawing in which qualified contestants are awarded prizes in a random manner in accordance with the procedures set forth for a specific promotion.

(45) [(44)] Quick Pick--A play option that generates random numbers in a manner approved by the commission.

(46) [(45)] Roll-over--The amount in a specific draw game prize pool category resulting from no matching combinations and/or prize breakage from the previous drawing.

(47) [(46)] Sales agent--A person licensed under the State Lottery Act to sell Texas Lottery tickets.

(48) [(47)] Scratch ticket--A scratch ticket lottery game, developed and offered for sale to the public in accordance with commission rules, that is played by revealing the ticket play symbols.

(49) [(48)] Shares--In a draw game, the total number of matching combinations within each prize category as determined for each drawing.

(50) [(49)] Terminal--A device authorized by the commission for the purpose of issuing draw game tickets and/or validating claims, including the commission or commission's vendor's computer hardware as well as commission-authorized third-party point-of-sale systems.

(51) [(50)] Third-party point-of-sale systems--Self-contained computerized equipment (not owned or operated by the commission or lottery operator) that performs sales-related tasks at a licensed lottery ticket retailer's checkout counter and that has the sole Texas Lottery-related purpose of selling lottery tickets. Third-party point-of-sale systems will only perform the same lottery-related tasks as terminals owned or operated by the commission or lottery operator and may not issue electronic tickets or display outcomes for draw and scratch games using casino-style graphics of any kind. Third-party point-of-sale systems do not include any gambling device.

(52) [(51)] Ticket--Any tangible evidence issued to provide participation in a lottery game or activity authorized by the State Lottery Act.

(53) [(52)] Ticket bearer--The person who has signed the ticket or who has possession of an unsigned ticket.

(54) [(53)] Ticket number--The number on the back of the scratch ticket that refers to the ticket sequence within a specific pack of a scratch ticket game.

(55) [(54)] Validation number--The unique alphanumeric number sequence or barcode printed on a ticket that provides for the verification of the ticket as a valid winner.

(56) [(55)] Valid ticket--A ticket which meets all specifications and validation requirements and entitles the holder to a specific prize amount.

(57) [(56)] Void ticket--Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply printed, fails any of the commission's confidential validation tests, or is a ticket produced by or for the commission for education and training purposes.

(58) [(57)] Winning combination--One or more digits, numbers, or symbols randomly selected by the commission in a drawing which has been certified.

§401.302. *Scratch Ticket Game Rules.*

(a) Sale of scratch tickets.

(1) Only retailers who have been licensed by the commission are authorized to sell scratch tickets, and scratch tickets shall may be sold only at the [a licensed] location listed on each retailer's license from the commission. For purposes of this section, the sale of a scratch ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location, including the exchange of consideration and the exchange of the scratch ticket.

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

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

(e) Payment of low-tier and mid-tier prizes.

(1) - (5) (No change.)

(6) If a low- or mid-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related

to claiming a prize [prize, including but not limited to filling out a claim form, presenting appropriate identification if required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(f) Payment of high-tier prizes.

(1) (No change.)

(2) If a high-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize [prize, including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(3) - (9) (No change.)

(g) - (k) (No change.)

§401.304. *Draw Game Rules (General).*

(a) (No change.)

(b) Sale of tickets.

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

(3) Draw game tickets shall be sold only at the location listed on each retailer's license from the commission. For purposes of this section, the sale of a draw game lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location using their terminal, including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the draw game ticket. No part of the sale may take place away from the terminal.

(4) - (6) (No change.)

(c) (No change.)

(d) Procedures for claiming draw game prizes.

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

(3) To claim a draw game prize of \$600 or more, the claimant shall present the winning draw game ticket to the commission. [For purposes of this provision, the term "commission" includes claim centers located throughout Texas.] In connection with certain draw games, the top-level prizes must be claimed at commission headquarters. For any claim presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize [prize, including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(4) - (10) (No change.)

(e) - (h) (No change.)

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

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



SUBCHAPTER E. RETAILER RULES

16 TAC §401.355

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.355. *Restricted Sales.*

(a) Retailers shall not sell lottery tickets via the internet or by mail, phone, fax, or other similar method of communications. Retailers shall not sell a lottery ticket or any other document evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under Texas Government Code §466.408 [§401.302(j)(3) of this title (relating to Scratch Ticket Game Rules)].

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

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

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Bob Biard

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Texas Lottery Commission

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SUBCHAPTER G. LOTTERY SECURITY

16 TAC §401.501

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.501. Lottery Security.

The Texas Lottery Commission considers security and integrity to be every commission [agency] employee's responsibility. [~~The security of the Texas Lottery Commission shall be developed and administered by agency's Security Division.~~] The Texas Lottery Commission [Security Division] shall develop and maintain [an internal] security plans and procedures through its designated divisions as required by the State Lottery Act, Texas Government Code, Chapter 466 [plan]. The commission's [agency's] security plans [plan] and [other security] procedures shall be designed to ensure the integrity and security of the operation of the Lottery and, to the extent that they are not inconsistent with Texas Public Information Act [Texas Open Records law], Texas Government Code, Chapter 552, are exempt from disclosure to the public.

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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Bob Biard

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S

RULES ON REPORTING REQUIREMENTS

19 TAC §61.1028

The Texas Education Agency (TEA) proposes the repeal of §61.1028, concerning reporting of bus collisions. The proposed repeal would relocate the existing requirements to proposed new 19 TAC §103.1231. The proposed new rule would include an update to remove the requirement related to the color of a multifunction school activity bus to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1028 requires school districts and open-enrollment charter schools to report bus collisions. The proposed repeal of §61.1028 would move the existing language to proposed new §103.1231. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

Proposed new §103.1231 would be updated to align the definition of "multifunction school activity bus" with Texas Transporta-

tion Code, §541.201, by removing the requirement related to color.

FISCAL IMPACT: James Finley, deputy chief of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation to relocate the requirements.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Finley has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 6, 2024, and ends January 6, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 6, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-

missioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code, §34.015, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §34.015.

§61.1028. Reporting of Bus Collisions.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1231

The Texas Education Agency (TEA) proposes new §103.1231, concerning reporting of bus collisions. The proposed new section would relocate existing requirements from 19 TAC §61.1028. The new section would include an update to remove the requirement related to the color of a multifunction school activity bus to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §103.1231 would move existing language from 19 TAC §61.1028, which requires school districts and open-enrollment charter schools to report bus collisions. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

Proposed new §103.1231 would include an update from the existing rule to align the definition of "multifunction school activity bus" with Texas Transportation Code, §541.201, by removing the requirement related to color.

FISCAL IMPACT: James Finley, deputy chief of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural commu-

nities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to relocate existing requirements.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Finley has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 6, 2024, and ends January 6, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 6, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §34.015, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §34.015.

§103.1231. Reporting of Bus Collisions.

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

(1) Collision--Any collision as described by Texas Transportation Code, Chapter 550, Subchapter B.

(2) Motor bus--In accordance with Texas Education Code, §34.003, and Texas Transportation Code, §502.001, a motor bus is a vehicle designed to transport more than 15 passengers, including the driver, and includes vehicles used to transport persons on the public highways for compensation, other than a vehicle operated by muscular power or a municipal bus.

(3) Multifunction school activity bus--In accordance with Texas Transportation Code, §541.201, a multifunction school activity bus is a subcategory of school bus. It must meet all Federal Motor Vehicle Safety Standards (FMVSS) for a school bus except having traffic control devices, including flashing lights and stop arm. The multifunction school activity bus cannot be used to transport students from home to school or school to home or for any purpose other than school activities.

(4) School activity bus--In accordance with Texas Transportation Code, §541.201, a school activity bus is a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a school district, county school, open-enrollment charter school, regional education service center, or shared services arrangement and that is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.

(5) School bus--In accordance with Texas Transportation Code, §541.201, a school bus is a motor vehicle that was manufactured in compliance with the FMVSS for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus, a school activity bus, or a motor bus.

(b) Reporting.

(1) School districts and open-enrollment charter schools shall report annually to the Texas Education Agency (TEA) the number of collisions in which their buses were involved in the past year. School districts and open-enrollment charter schools shall report the collisions in a manner prescribed by the commissioner of education. School districts and open-enrollment charter schools shall file annual collision reports to TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

(A) the total number of bus collisions;

(B) the date each collision occurred;

(C) the type of bus, as specified in subsection (a) of this section, involved in each collision;

(D) whether the bus involved in each collision was equipped with seat belts and, if so, the type of seat belts;

(E) the number of students and adults involved in each collision;

(F) the number and types of injuries that were sustained by the bus passengers in each collision; and

(G) whether the injured passengers in each collision were wearing seat belts at the time of the collision and, if so, the type of seat belts.

(2) A school district or open-enrollment charter school shall report a bus collision involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus is owned, leased, contracted, or chartered by a school district or charter school and was transporting school district or charter school personnel, students, or a combination of personnel and students; or

(B) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor with no passengers on board and the collision involved a pedestrian.

(3) A school district or open-enrollment charter school shall not report a bus collision involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor, the collision occurred when no passenger other than the school district's or charter school's driver or bus contractor's driver was on board the bus, and the collision did not involve a pedestrian; or

(B) the collision involved a bus chartered by a school district or charter school for a school activity trip and no school district or charter school personnel or students were on board the bus at the time of the collision.

(4) A school district or open-enrollment charter school shall not report a collision that occurred in a vehicle that is owned, contracted, or chartered by a school district or charter school and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.1, concerning continuing education requirements. The proposed amendment allows dentists and dental hygienists to reduce their 24-hour continuing education

requirement by 2 hours if they attest they read all newsletters issued by the Texas State Board of Dental Examiners during their renewal period. The proposed amendment does not apply to the 16-hour technical and scientific requirement.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§104.1. Continuing Education Requirements.

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

(i) reasonable standards of care;

(ii) the identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) Up to 8 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update

course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) As part of the 24-hour requirement, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(4) Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(5) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(6) Examiners for The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), States Resources for Testing and Assessments (SRTA), and Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(7) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(8) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(9) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director, or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

(10) A course instructor who offers continuing education through a provider listed in §104.2 of this title is eligible to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit applies per course, per renewal period.

(11) The 24-hour requirement may be reduced by 2 hours if licensees attest they read all newsletters issued by the Texas State Board of Dental Examiners during their renewal period. This does not apply to the 16-hour technical and scientific requirement.

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

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Lauren Studdard

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 305-8910

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CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER D. MOBILE DENTAL FACILITIES

22 TAC §108.42

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.42, concerning obtaining a permit. The proposed amendment removes the requirement that a mobile dental facility or portable dental unit must have a lead apron with thyroid shield when x-rays are made. The American Academy of Oral and Maxillofacial Radiology (AAOMR) recently issued guidelines titled "Patient shielding during dentomaxillofacial radiography" where the AAOMR recommended discontinuing the use of lead aprons and thyroid shields when making x-rays. The Board held a stakeholder meeting on September 27, 2024, where a majority of stakeholders stated that Board rules should be amended to remove requiring the use of lead aprons and thyroid shields based on the AAOMR guidelines.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§108.42. *Obtaining a Permit.*

(a) A licensed Texas dentist, an organization authorized by the Dental Practice Act or other organization as defined by rule 108.41 (3) of this title (relating to Definitions) and approved by the SBDE wishing to operate a mobile dental facility or a portable dental unit, shall apply to the State Board of Dental Examiners (SBDE) for a permit on a form provided by the Board and pay an application fee in an amount set by the Board. A governmental or educational entity may obtain a single permit, respectively, for all facilities; or all units listed on an application.

(b) A completed application form submitted to the SBDE with all questions answered will be reviewed and if all the requirements listed in this section are met, a permit will be issued. All applications must include:

- (1) an address of record that is not a Post Office Box; and,
- (2) the name and address of the permit holder.

(c) All applicants except governmental and higher educational entities must also include:

(1) the name and address, and when applicable, the license number of each dentist, dental hygienist, laboratory technician, and dental assistant associated with the facility or unit for which a permit is sought;

(2) a copy of a written agreement for the emergency follow-up care for patients treated in the mobile dental facility, or through a portable dental unit, and such agreement must include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

(3) a statement that the mobile dental facility or portable dental unit has access to communication facilities which will enable dental personnel to contact assistance as needed in the event of an emergency;

(4) a statement that the mobile dental facility or portable dental unit conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction standards, including required or suitable access for disabled individuals, sanitation, and zoning;

(5) a statement that the applicant possesses all applicable county and city licenses or permits to operate the facility or unit;

(6) either a statement that the unit will only be used in dental offices of the applicant or other licensed dentists, or a list of all equipment to be contained and used in the mobile dental facility or portable dental unit, which must include:

(A) dental treatment chair;

(B) a dental treatment light;

(C) when radiographs are to be made by the mobile dental facility or portable dental unit, a stable portable radiographic unit that is properly monitored by the authorized agency;

~~[(D) when radiographs are to be made by the mobile dental facility or portable dental unit, a lead apron which includes a thyroid collar;]~~

~~(D) [(E)] a portable delivery system, or an integrated system if used in a mobile dental facility;~~

~~(E) [(F)] an evacuation unit suitable for dental surgical use; and~~

~~(F) [(G)] a list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc., that are on hand.~~

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 November 22, 2024.

TRD-202405723

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910



CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §111.1, concerning additional continuing education requirements. The proposed amendment removes subsection (a) and paragraph (b)(1) because they are no longer in effect. The current continuing education requirement regarding controlled substances is found in paragraph (1) of this amended rule and in 22 TAC §104.1(2)(B). The proposed amendment also updates the name of the title for 22 TAC §104.1.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be a clear regulation.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no

economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation or elimination of employee positions;
- (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations;
- (4) the proposed rule does not require an increase in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand an existing regulation;
- (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§111.1. Additional Continuing Education Required.

~~[(a) Effective until September 1, 2020, each dentist who is permitted by the Drug Enforcement Agency to prescribe controlled substances shall complete every three years a minimum of two hours of continuing education in the abuse and misuse of controlled substances, opioid prescription practices, and/or pharmacology. This continuing education may be utilized to fill the continuing education requirements of annual renewal.]~~

[(b)] Effective beginning September 1, 2020, each dentist who is permitted by the Drug Enforcement Agency (or any subsequent permitting authority authorized by state and federal law) to prescribe controlled substances must complete 2 hours of continuing education related to approved procedures of prescribing and monitoring controlled substances as outlined in paragraphs (1) - (2) ~~[(3)]~~ of this section ~~[subsection]~~. These 2 hours of continuing education may be used to satisfy the recordkeeping continuing education requirements of §104.1 of this title (relating to Continuing Education Requirements ~~[Requirement]~~). After completing the initial requirement, a dentist may, no more than once annually, take the course under this section ~~[subsection]~~ to fulfill hours toward the recordkeeping continuing education requirement.

~~[(1) For dentists authorized to prescribe controlled substances before September 1, 2020, the 2 hours of required continuing education must be completed no later than September 1, 2021.]~~

(1) ~~[(2)]~~ For dentists who are authorized to prescribe controlled substances on or after September 1, 2020, the 2 hours of required continuing education must be completed not later than the first anniversary after the person is issued an authorization to prescribe.

(2) ~~[(3)]~~ For dentists who have surrendered the permit or authorization to prescribe controlled substances or have their permit or authorization to prescribe controlled substances revoked by any administrative, civil, or criminal proceeding, the requirements of paragraph (1) ~~[(2)]~~ of this section ~~[subsection]~~ shall apply to any new permit or authorization granted on or after September 1, 2020, regardless of whether the dentist previously satisfied the requirements of this section ~~[subsection]~~.

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 November 22, 2024.

TRD-202405725

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910



CHAPTER 113. REQUIREMENTS FOR DENTAL OFFICES

22 TAC §113.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §113.2, concerning X-Ray Laboratories. The proposed amendment removes the requirement that dental patients must be protected by a lead apron with thyroid collar. The American Academy of Oral and Maxillofacial Radiology (AAOMR) recently issued guidelines titled "Patient shielding during dentomaxillofacial radiography" where the AAOMR recommended discontinuing the use of lead aprons and thyroid shields when making x-rays. The Board held a stakeholder meeting on September 27, 2024, where a majority of stakeholders stated that Board rules should be amended to remove requiring the use of lead aprons and thyroid shields based on the AAOMR guidelines.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§113.2. *X-Ray Laboratories.*

(a) All dental licensees, including dentists, dental hygienists or other dental auxiliaries shall comply with Title 25 Texas Administrative Code §289.232 (Radiation Control Regulations for Dental Radiation Machines) as promulgated by the Texas Department of State Health Services Radiation Control Program or its successor.

(b) All dental x-ray laboratories operating in this state must be under the general supervision of a Texas licensed dentist.

~~[(c) All dental patients must be protected by a lead apron with the thyroid collar while directly exposed to x-rays with the exception of those radiographs where it is necessary to image areas concealed or obstructed by a thyroid collar. A non-lead apron may be used instead of a lead apron if the non-lead apron provides protection from x-rays that is equivalent to that of a lead apron.]~~

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 November 22, 2024.

TRD-202405724

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910

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CHAPTER 114. EXTENSION OF DUTIES
OF AUXILIARY PERSONNEL--DENTAL
ASSISTANTS

22 TAC §114.12

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.12, concerning continuing education for certificate holders. The proposed amendment updates the rule to reflect that dental assistant registrations have a biennial renewal cycle. In addition, the proposed amendment requires registered dental assistants to complete two hours of continuing education in the laws and regulations of the Board.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§114.12. *Continuing Education for Certificate Holders.*

(a) To renew a certificate of registration issued under this chapter, a dental assistant must complete twelve (12) [six (6)] hours of continuing education biennially [each year] in areas covering dental assistant duties.

(1) At least six (6) [three (3)] of these twelve (12) [six (6)] hours must be clinical continuing education; and, [-]

(2) Effective September 1, 2025, at least two (2) of these twelve (12) hours must be a course in the laws and regulations of the Texas State Board of Dental Examiners.

(b) A dental assistant may fulfill the continuing education requirement through board-approved self-study, interactive computer courses, or lecture courses. All continuing education must be offered by providers approved under 22 Texas Administrative Code §104.2.

(c) As a prerequisite to the renewal of a dental assistant's certificate of registration, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

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 November 22, 2024.

TRD-202405721

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.16

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.16, License Reinstatement.

The proposed amendments to §153.16 define the requirements for the reinstatement of an expired trainee license.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the pro-

posed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation; and

increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.16. *License Reinstatement.*

(a) Subsections (a) - (f) apply [~~This section applies~~] only to a person who:

(1) previously held a residential appraiser license or certification or general appraiser certification issued by the Board that has been expired for more than six months; and

(2) seeks to obtain the same level of appraiser license previously held by the person before its expiration.

(b) A person who seeks to reinstate a license expired less than five years must:

- (1) submit an application for reinstatement on a form approved by the Board;
- (2) pay the required fee;
- (3) satisfy the Board as to the person's honesty, trustworthiness and integrity;
- (4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title; and
- (5) complete all AQB continuing education requirements that would have been required had the license not expired.

(c) A person who seeks to reinstate a license expired five years or more must:

- (1) satisfy the requirements of subsection (b); and
- (2) submit an experience log demonstrating his or her experience complies with USPAP, as outlined in subsection (d).

(d) An experience log submitted under subsection (c) must include at least 10 appraisals of a property type accepted by the AQB for the applicable license category, completed within 5 years from the date of application under this section.

(e) Unless otherwise provided in this section, the board will verify and award experience submitted under subsection (d) in accordance with §153.15 of this title (relating to Experience Required for Licensing).

(f) If a person who seeks to reinstate a license under subsection (c) is unable to submit appraisals or supporting documentation for verification, he or she may apply for a license as an appraiser trainee for the purposes of acquiring the appraisal experience required for reinstatement.

(g) Subsections (g) - (h) apply only to a person who previously held a trainee license issued by the Board that has been expired for more than six months and seeks to reinstate the trainee license.

(h) A person who seeks to reinstate a trainee license must:

- (1) submit an application for reinstatement on a form approved by the Board;
- (2) pay the required fee;
- (3) satisfy the Board as to the person's honesty, trustworthiness and integrity;
- (4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title; and
- (5) complete all AQB continuing education requirements that would have been required had the license not expired.

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 November 20, 2024.

TRD-202405627

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 936-3088



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.203, §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.204, Complaint Processing and new 22 TAC §159.203, Sanctions Guidelines.

The proposed amendments to §159.204 clarifies the preliminary investigative review process, adds a subsection for the online payment of administrative penalties and required fees, and removes the sanctions guidelines for placement into new rule, 159.203.

New §159.203 is formerly section (m) of §159.204 that outlines the Board's sanctions guidelines and factors taken into consideration for case disposition. Both rules are amended for renumbering and to reflect corresponding references to sections within the rule.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments and new rule are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments or new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments or new rule. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments and new rule will be requirements that are consistent with statutes are more transparent, and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and

increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments and new rule are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments and new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments and new rule is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.203. Sanctions Guidelines.

In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this section, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act or Board rules;

(E) "Minor deficiencies" is defined as violations of the AMC Act or Board rules which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act or Board rules which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this section to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;
(ii) A final order which imposes one or more of the following:

(I) Remedial measures;
(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures;
- (iv) A final order which imposes one or more of the following:

(I) Remedial measures;
(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act or Board rules; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done

with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of Board Rules, or the AMC Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act or Board rules will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this section;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act or Board rules.

§159.204. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the AMC Act or Board rules that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Violations of appraiser independence; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

- (2) were done:
 - (A) with knowledge;
 - (B) deliberately;
 - (C) willfully; or
 - (D) with gross negligence.

(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Executive Director may delegate to staff the duty to dismiss complaints.

(d) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) will be referred to the appropriate prosecutorial authorities.

(e) Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(f) If the TALCB Division requires additional information from a Respondent during the [As part of a] preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be included in the request [sent to the Respondent] unless the complaint qualifies for covert investigation and the TALCB Division deems covert investigation appropriate.

(g) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(h) The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other

matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(i) Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act or Board rules exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint will be dismissed with no further processing.

(j) A formal complaint will be opened and investigated by a staff investigator or investigative committee if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(k) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(l) The staff investigator or investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

~~[(m) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.]~~

~~[(1) For the purposes of these sanctions guidelines:]~~

~~[(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;]~~

~~[(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;]~~

~~[(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;]~~

~~[(D) A violation refers to a violation of any provision of the AMC Act or Board rules;]~~

~~[(E) "Minor deficiencies" is defined as violations of the AMC Act or Board rules which do not call into question the qualification of the AMC for licensure in Texas;]~~

~~[(F) "Serious deficiencies" is defined as violations of the Act or Board rules which do call into question the qualification of the AMC for licensure in Texas;]~~

~~[(G) "Remedial measures" include training, auditing, or any combination thereof; and]~~

~~[(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the~~

agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.}]

[(2) List of factors to consider in determining proper disposition of a formal complaint:}]

[(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;}]

[(B) Whether the Respondent has previously been disciplined;}]

[(C) If previously disciplined, the nature of the discipline, including:}]

[(i) Whether it concerned the same or similar violations or facts;}]

[(ii) The nature of the disciplinary sanctions imposed;}]

[(iii) The length of time since the previous discipline;}]

[(D) The difficulty or complexity of the incident at issue;}]

[(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;}]

[(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;}]

[(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:}]

[(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;}]

[(ii) The Board;}]

[(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;}]

[(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;}]

[(v) A consumer contemplating a real property transaction involving the consumer's principal residence;}]

[(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;}]

[(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;}]

[(J) The business operating history of the AMC, including:}]

[(i) The size of the AMC's appraiser panel;}]

[(ii) The length of time Respondent has been licensed as an AMC in Texas;}]

[(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;}]

[(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and}]

[(v) Respondent's affiliation with other business entities;}]

[(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and}]

[(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.}]

[(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:}]

[(A) 1st Time Discipline Level 1—violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:}]

[(i) Dismissal;}]

[(ii) Dismissal with non-disciplinary warning letter;}]

[(iii) Contingent dismissal with remedial measures.}]

[(B) 1st Time Discipline Level 2—violations of the AMC Act or Board rules which evidence serious deficiencies will result in one of the following outcomes:}]

[(i) Contingent dismissal with remedial measures;}]

[(ii) A final order which imposes one or more of the following:}]

[(I) Remedial measures;}]

[(II) Required adoption and implementation of written, preventative policies or procedures;}]

[(III) A probationary period with provisions for monitoring the AMC;}]

[(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;}]

[(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;}]

[(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.}]

[(C) 1st Time Discipline Level 3—violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:}]

[(i) A period of suspension;}]

[(ii) A revocation;}]

[(iii) Remedial measures;}]

[(iv) Required adoption and implementation of written, preventative policies or procedures;}]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(D) 2nd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:]

{(i)} Dismissal;]

{(ii)} Dismissal with non-disciplinary warning letter;]

{(iii)} Contingent dismissal with remedial measures;]

{(iv)} A final order which imposes one or more of the following:]

{(I)} Remedial measures;]

{(II)} Required adoption and implementation of written, preventative policies or procedures;]

{(III)} A probationary period with provisions for monitoring the AMC;]

{(IV)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(V)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(VI)} Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(E) 2nd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(F) 2nd Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(G) 3rd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(H) 3rd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

~~[(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]~~

~~[(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]~~

~~[(I) 3rd Time Discipline Level 3—violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:]~~

~~[(i) A revocation; and]~~

~~[(ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of Board Rules, or the AMC Act; each day of a continuing violation is a separate violation.]~~

~~[(J) 4th Time Discipline—violations of the AMC Act or Board rules will result in a final order which imposes one or more of the following:]~~

~~[(i) A revocation; and]~~

~~[(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]~~

~~[(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.]~~

~~[(4) In addition, staff may recommend any or all of the following:]~~

~~[(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;]~~

~~[(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;]~~

~~[(C) Requiring additional reporting requirements;]~~

~~[(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and]~~

~~[(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act or Board rules.]~~

~~[(m) [(n)] The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.~~

~~[(n) Payment of an administrative penalty must be submitted in a manner acceptable to the to the Board. Payment authorized to be submitted online may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Board.~~

~~[(o) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1104.2081 must be signed by:~~

~~(1) The Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be~~

(in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) A representative of the TALCB Division; and

(4) The Executive Director or his or her designee.

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 November 20, 2024.

TRD-202405626

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 936-3088



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER Y. ADVERSE LICENSING, LISTING, OR REGISTRATION DECISIONS

25 TAC §1.601

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §1.601, concerning Decisions Based on Interagency Records.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rule to Texas Government Code Chapter 526 that becomes effective on April 1, 2025. The proposed amendment updates the affected citations to Texas Government Code.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates references to existing laws.

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 last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following

business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§1.601. Decisions Based on Interagency Records.

(a) Scope of subchapter. In accordance with Health and Safety Code, Chapter 531, this subchapter applies to the final licensing or registration decisions of the Department of State Health Services (department) that resulted in a final order that was not reversed on appeal, for the following persons or entities regulated under the Health and Safety Code:

- (1) a youth camp licensed under Chapter 141;
- (2) a hospital licensed under Chapter 241;
- (3) a special care facility licensed under Chapter 248;
- (4) a chemical dependency treatment facility licensed under Chapter 464; and
- (5) a mental hospital or mental health facility licensed under Chapter 577.

(b) Record of final decision. In accordance with Texas Government Code §526.0454[~~Government Code, §531.952~~], the department shall maintain a record:

- (1) of each application for a license, including a renewal license or a registration that is denied by the department under the law authorizing the department to regulate the person or entity;
- (2) of each license or registration that is revoked, suspended, or terminated by the department under the applicable law;
- (3) until the 10th anniversary of the date of the denial, revocation, suspension, or termination;
- (4) that includes:
 - (A) the name and address of the applicant for a license or registration that is denied by the department, and the name and address of each person named on the application for a license or registration that is denied;
 - (B) the name of each controlling person of an entity for which an application, license or registration is denied, revoked, suspended, or terminated as described in paragraphs (1) and (2) of this subsection and the specific type of license or registration that was denied, revoked, suspended, or terminated by the department;
 - (C) a summary of the terms of the denial, revocation, suspension, or termination; and
 - (D) the period the denial, revocation, suspension, or termination was effective.

(5) The department shall provide a copy of the records maintained under this section, in a form determined by the department, to the Department of Aging and Disability Services and the Department of Family and Protective Services (each Health and Human Services agency that regulates a person described by Texas

Government Code Chapter 526 [Government Code, Chapter 531] on a monthly basis.

(c) Denial of application based on adverse agency decision. The department may deny an application for a license, including a renewal license or a registration of a person described in subsection (a) of this section if:

(1) the applicant, a person named on the application, or a person determined by the regulating agency to be a controlling person of an entity for which the license, listing, or registration is sought is listed in a record maintained by a Health and Human Services agency under Texas Government Code §526.0454[Government Code, §531.952]; and

(2) the agency's action that resulted in the person being listed in a record maintained under Texas Government Code §526.0454[Government Code, §531.952], is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person;

(B) a threat to the health, safety, or well-being of an individual in the care of the applicant or person;

(C) the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or

(D) a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

(d) Required application information. An applicant submitting an initial or renewal application for a license, including a renewal license or a registration described in subsection (a) of this section must include with the application a written statement of:

(1) the name of any person who is or will be a controlling person of the entity for which the license or registration is sought; and

(2) any other relevant information required by law, rule, or department policy.

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 November 21, 2024.

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Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 5, 2025

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



PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 602. PROCEDURE REQUIRING FULL DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST A

25 TAC §§602.3, 602.5, 602.9, 602.16

The Texas Medical Disclosure Panel (Panel) proposes amendments to §602.3, concerning Digestive System Treatments and Procedures; §602.5, concerning Endocrine System Treatments and Procedures; §602.9, concerning Breast Surgery (non-cosmetic) Treatments and Procedures; and §602.16, concerning Urinary System Treatments and Procedures.

BACKGROUND AND PURPOSE

These amendments are proposed in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

The purpose of these amendments is to modify the list of procedures and risks and hazards in §§602.3, 602.5, 602.9, and 602.16 and update these sections using plain language when possible.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §602.3, Digestive System Treatments and Procedures, revises and lists additional types of digestive system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §602.5, Endocrine System Treatments and Procedures, revises and lists additional types of endocrine system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §602.9, Breast Surgery (Non-cosmetic) Treatments and Procedures, revises and lists additional types of breast surgery (non-cosmetic) treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §602.16, Urinary System Treatments and Procedures, revises and lists additional types of urinary system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

The Panel 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 employee positions;

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

- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the Panel has insufficient information to determine the proposed rules' effect on the state's economy.

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

Dr. Appel 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.

The Panel is unable to provide an estimate of the number of small businesses and micro businesses affected.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years the rules are in effect, the public benefit will be that patients are better informed about the risks and hazards related to medical treatments and surgical procedures they are considering and there will be improved clarity in this chapter of the Texas Administrative Code.

Dr. Appel 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.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Debasmitha Bhakta, TMDP Liaison, Health and Human Services Commission; P.O. Box 149030, Mail Code E-249, Austin, Texas, 78714-9030; fax (877) 438-5827; office (512) 438-2889, or by email to: hhsc_tmdp@hhsc.state.tx.us.

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) faxed or emailed before midnight on the last day of the comment period. If last day

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

STATUTORY AUTHORITY

The amendments to the sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

The amendments to the sections implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

The Panel hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the Panel's legal authority.

§602.3. Digestive System Treatments and Procedures.

(a) Cholecystectomy with or without common bile duct exploration.

- (1) Pancreatitis (inflammation of the pancreas).
- (2) Bile duct injury (Injury to the tube between the liver and the bowel) [~~Injury to the tube between the liver and the bowel~~].

(3) Retained bile duct stones (stones remaining in the tube between the liver and the bowel) [~~in the tube between the liver and the bowel~~].

(4) Bile duct stenosis or occlusion (narrowing or obstruction of the tube between the liver and the bowel) [~~Narrowing or obstruction of the tube between the liver and the bowel~~].

- (5) Injury to the bowel and/or intestinal obstruction.
- (6) Bile leak (leak of bile from end of gallbladder duct or variant duct from the liver).

(b) Bariatric surgery (including gastric bypass (Roux-en-Y), biliopancreatic diversion with duodenal switch, sleeve gastrectomy, gastric banding).

(1) Failure of wound to heal or wound dehiscence (separation of wound).

(2) Injury to organs.

(3) Failure of device, including slippage or erosion requiring additional surgical procedure (for surgeries with implanted devices such as gastric banding).

(4) Obstructive symptoms requiring additional surgical procedure.

(5) Development of gallstones (Roux-En-Y).

(6) Development of metabolic and vitamin disorders (Roux-En-Y, biliopancreatic diversion with duodenal switch).

(7) Dumping syndrome causing nausea, vomiting, diarrhea, dizziness, sweating (Roux-En-Y, biliopancreatic diversion with duodenal switch).

(c) Pancreatectomy (subtotal or total and including Whipple Procedure (pancreaticoduodenectomy)).

- (1) Pancreatitis (inflammation of the pancreas) (subtotal).
- (2) Diabetes (total).
- (3) Lifelong requirement of enzyme and digestive medication.

(4) Anastomotic leaks (leak of bile or intestinal fluids at surgical site where ducts and intestines are joined).

(d) Colectomy - total or subtotal [~~Total colectomy~~].

- (1) Permanent ileostomy.
- (2) Injury to organs.
- (3) Infection.
- (4) Anastomotic leaks (leak of bowel contents at site where intestines reattached).

(5) Need for colostomy, permanent or temporary (subtotal colectomy).

(6) Incontinence (if ileoanal anastomosis)(unable to control bowel if small bowel attached directly to anus).

~~[(e) Subtotal colectomy.]~~

- ~~[(1) Anastomotic leaks.]~~
- ~~[(2) Temporary colostomy.]~~
- ~~[(3) Infection.]~~
- ~~[(4) Second surgery.]~~
- ~~[(5) Injury to organs.]~~

(e) ~~[(f)]~~ Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy (bile duct, gallbladder, and gallstone related procedures).

(1) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).

- (2) Pancreatitis (inflammation of the pancreas).
- (3) Hemobilia (bleeding into the bile ducts).
- (4) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).

(5) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).

(f) ~~[(g)]~~ Gastrointestinal tract stenting.

(1) Stent migration (stent moves from location in which it was placed).

(2) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).

- (3) Tumor ingrowth or other obstruction of stent.
- (4) For stent placement in the esophagus (tube from the throat to the stomach).

(A) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.

(B) Reflux (stomach contents passing up into esophagus or higher).

(C) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).

(D) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).

(E) Tracheoesophageal fistula (formation of hole and connection between the windpipe and tube between mouth and stomach).

(g) Anti reflux procedures (surgical, endoscopic, including hiatal hernia repair).

(1) Dysphagia (difficulty swallowing).

(2) Stomach bloating, difficulty belching or vomiting.

(3) Esophageal perforation (hole in tube from mouth to stomach).

(4) Mediastinal abscess (infected collection in central portion of chest).

(5) Pneumothorax (collapsed lung).

(6) Device erosion into esophagus/surrounding tissues (procedures with implanted devices).

(h) Endoscopy simple (diagnostic endoscopy).

(1) Perforation (hole) of the esophagus (tube from mouth to stomach), stomach, small intestine (with leakage of contents into chest or abdomen), possibly requiring additional procedures including open surgery.

(2) Need for inclusion of or conversion to advanced endoscopy procedures with those risks (see subsection (i) of this section).

(i) Advanced upper endoscopic procedures (anything more than simple, diagnostic endoscopy) (ERCP, POEM, ESD, pancreatic fluid collection drainage/necrosectomy).

(1) Perforation (hole) of the esophagus, stomach, small intestine (with leakage of contents into chest or abdomen).

(2) Pancreatitis (inflammation of the pancreas) (for any procedures involving pancreas/pancreatic duct).

(3) Hemorrhage (Severe bleeding).

(4) Adjacent organ injury for transluminal procedures (e.g. liver biopsy, fluid drainage).

(5) Biliary peritonitis (bile leakage causing inflammation of the abdominal cavity).

(6) Sepsis (severe infection).

(j) Appendectomy.

(1) Injury to nearby organs.

(2) Infectious collection of fluid (abscess) requiring additional procedure(s).

(3) Normal appendix.

(k) Hemorrhoidectomy with/without fistulectomy or fissurectomy.

(1) Fecal incontinence (unable to control bowel).

(2) Anal stenosis (narrowing of the anus).

(3) Damage to bowel.

(4) Recurrent or new hemorrhoid(s).

(l) Repair and plastic operations on anus and rectum (anal fistula repair, rectovaginal fistula repair, rectal prolapse repair, anal sphincter repair, perineal reconstruction).

(1) Fecal incontinence (unable to control bowel).

(2) Anal stenosis (narrowing of the anus).

(3) Damage to bowel.

(m) Hernia repair (for example inguinal or ventral) (for hiatal hernia repair see subsection (g) of this section).

(1) Injury to adjacent structures (bowel, bladder, blood vessels, nerves).

(2) Seroma (fluid) or hematoma (blood) collection at surgical site.

(3) Chronic pain.

(4) Testicular injury (for those of male sex).

(5) If mesh used, infection, failure, migration, or rejection of the mesh.

(6) Recurrence.

(n) Esophageal dilatation (opening a narrowing of the tube between the mouth and the stomach).

(1) Perforation of the esophagus (creation of hole in tube from mouth to stomach), with possible need for additional procedures including open surgery.

(2) Recurrent stenosis (return of narrowing of the tube from the mouth to the stomach).

(o) Gastrostomy/gastrojejunostomy open, percutaneous, or endoscopic (placement of tube directly between the skin and the stomach with surgical incision, puncture from the skin into the stomach, or puncture from the stomach out towards the skin with endoscopy (camera)).

(1) Damage to surrounding organs.

(2) Hemorrhage (severe bleeding).

(3) Peritonitis (irritation of the abdominal compartment).

(p) Pyloromyotomy (cutting of the muscle at the end of the stomach to treat blockage of the stomach outlet).

(1) Perforation (creation of a hole from the mucosa (inside of the stomach) to the outside of the stomach) possibly requiring additional procedures or surgeries.

(2) Incomplete myotomy (incomplete cutting of the muscle) possibly requiring repeat procedure/surgery.

(3) Delayed gastric emptying (food takes longer to leave the stomach than normal).

(q) Colonoscopy. Perforation (creation of a hole in the intestine) possibly requiring additional procedures or open surgery.

§602.5. Endocrine System Treatments and Procedures.

(a) Thyroidectomy.

(1) Acute airway obstruction requiring temporary tracheostomy (creation of hole in neck to breathe).

(2) Injury to nerves resulting in hoarseness or impairment of speech.

(3) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.

(4) Lifelong requirement of thyroid medication.

(b) For scarless/minimally invasive thyroidectomy.

(1) All risks of standard thyroidectomy.

(2) For axillary approach.

(A) Injury to brachial plexus (nerves in shoulder/neck) which can affect function of muscles and sensation in the affected extremity.

(B) Tract seeding of thyroid tissue (thyroid tissue can deposit and grow along the surgical tract).

(C) Postoperative seroma (fluid collection in the area of the surgery).

(D) Great vessel injury (injury to large blood vessels of the upper chest and neck).

(3) Transoral/transoral vestibular approach (TOETVA)).

(A) CO2 embolism (gas bubbles enter bloodstream) (Transoral/transoral vestibular approach (TOETVA)).

(B) Mental nerve injury (nerve injury causing paresthesias (pins and needles sensation) of the lower lip and/or chin) (Transoral/transoral vestibular approach (TOETVA)).

(C) Skin perforation (hole in skin) (Transoral/transoral vestibular approach (TOETVA)).

(D) Burns (Transoral/transoral vestibular approach (TOETVA)).

(E) Surgical space infection (Transoral/transoral vestibular approach (TOETVA)).

(c) [(b)] Parathyroidectomy.

(1) Acute airway obstruction requiring temporary tracheostomy (creation of hole in neck to breathe).

(2) Injury to nerves resulting in hoarseness or impairment of speech.

(3) Low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness, and muscle irritability.

(4) Persistent high calcium level with need for additional treatment/surgery.

(d) [(e)] Adrenalectomy.

(1) Loss of endocrine functions (lifelong requirement for hormone replacement therapy and steroid medication).

[(2) Lifelong requirement for hormone replacement therapy and steroid medication.]

(2) [(3)] Damage to kidneys.

(d) Other procedures.

(e) For pituitary surgery, see §602.13 of this chapter (relating to Nervous System Treatments and Procedures).

(f) [(e)] For pancreatic surgery, see [See also Pancreatectomy under] §602.3 of this chapter (relating to Digestive System Treatments and Procedures).

§602.9. *Breast Surgery (non-cosmetic) Treatments and Procedures.*

(a) Radical or modified radical mastectomy (removal of the breast, possible removal of other chest wall tissues, and possible removal of lymph nodes in the chest and/or under the arm).

- (1) Limitation of movement of shoulder and arm.
- (2) Permanent swelling of the arm.
- (3) Loss of the skin of the chest requiring skin graft.

(4) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(5) Decreased sensation or numbness of the inner aspect of the arm and chest wall.

(b) Simple mastectomy (removal of the breast).

(1) Loss of skin of the chest requiring skin graft.

(2) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(3) Decreased sensation or numbness of the nipple.

(c) Lumpectomy (removal of a portion of the breast).

(1) Loss of skin of the chest requiring skin graft.

(2) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(3) Decreased sensation or numbness of the nipple.

(d) Open biopsy of the breast.

(1) Loss of skin of the chest requiring skin graft.

(2) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(3) Decreased sensation or numbness of the nipple.

§602.16. *Urinary System Treatments and Procedures.*

(a) Nephrectomy [Partial nephrectomy] (removal of part or all of the kidney).

(1) Incomplete removal of stone(s) or tumor, if present.

(2) Blockage of urine (risk of partial nephrectomy).

(3) Leakage of urine at surgical site.

(4) Injury to or loss of the entire kidney (risk of partial nephrectomy, intentional for total or radical nephrectomy).

(5) Loss of the adrenal gland (gland on top of the kidney that makes certain hormones/chemicals the body needs) - intentional in the case of radical nephrectomy.

(6) ~~[(5)]~~ Damage to organs next to kidney.

~~[(b) Radical nephrectomy (removal of kidney and adrenal gland for cancer).]~~

~~[(1) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).]~~

~~[(2) Incomplete removal of tumor.]~~

~~[(3) Damage to organs next to kidney.]~~

~~[(e) Nephrectomy (removal of kidney).]~~

~~[(1) Incomplete removal of tumor if present.]~~

~~[(2) Damage to organs next to kidney.]~~

~~[(3) Injury to or loss of the kidney.]~~

~~(b) [(4)] Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).~~

~~(1) Incomplete removal of stone(s).~~

~~(2) Blockage of urine.~~

~~(3) Leakage of urine at surgical site.~~

~~(4) Injury or loss of the kidney.~~

~~(5) Damage to organs next to kidney.~~

~~(c) [(e)] Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system). Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).~~

~~(1) Blockage of urine.~~

~~(2) Leakage of urine at surgical site.~~

~~(3) Injury to or loss of the kidney (pyeloureteroplasty) or ureter (ureterolithotomy).~~

~~(4) Damage to organs next to kidney.~~

~~(5) Incomplete removal of the stone or tumor (when applicable).~~

~~[(f) Exploration of kidney or perinephric mass.]~~

~~[(1) Incomplete removal of stone(s) or tumor, if present.]~~

~~[(2) Leakage of urine at surgical site.]~~

~~[(3) Injury to or loss of the kidney.]~~

~~[(4) Damage to organs next to kidney.]~~

~~[(g) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).]~~

~~[(1) Leakage of urine at surgical site.]~~

~~[(2) Incomplete removal of the stone or tumor (when applicable).]~~

~~[(3) Blockage of urine.]~~

~~[(4) Damage to organs next to ureter.]~~

~~[(5) Damage to or loss of the ureter.]~~

~~(d) [(4)] Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).~~

~~(1) Leakage of urine at surgical site.~~

~~(2) Incomplete removal of stone.~~

~~(3) Blockage of urine.~~

~~(4) Damage to organs next to ureter (tube that carries urine from kidney to bladder).~~

~~(5) Damage to or loss of ureter (tube that carries urine from kidney to bladder).~~

~~(e) [(4)] Ureterectomy (partial/complete removal of ureter tube that carries urine from kidney to bladder), Ureterolysis (partial/complete removal of ureter (tube that carries urine from kidney to bladder) from adjacent tissue [(tube between kidney and bladder)]).~~

~~(1) Leakage of urine at surgical site.~~

- (2) Incomplete removal of stone (if stone present).
- (3) Blockage of urine.
- (4) Damage to organs next to ureter.
- (5) Damage to or loss of ureter (ureterolysis).
- ~~[(j)]~~ Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).
- ~~[(1)]~~ Leakage of urine at surgical site.
- ~~[(2)]~~ Blockage of urine.
- ~~[(3)]~~ Damage to organs next to ureter.
- ~~[(4)]~~ Damage to or loss of ureter.
- ~~[(f)]~~ ~~[(k)]~~ Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).
- (1) Leakage of urine at surgical site.
- (2) Blockage of urine.
- (3) Damage to or loss of ureter.
- (4) Backward flow of urine from bladder into ureter.
- (5) Damage to organs next to ureter.
- ~~[(g)]~~ ~~[(h)]~~ Prostatectomy (partial or total removal of prostate).
- (1) Leakage of urine at surgical site.
- (2) Blockage of urine.
- (3) Incontinence (difficulty with control of urine flow).
- (4) Semen passing backward into bladder.
- (5) Difficulty with penile erection (possible with partial and probable with total prostatectomy).
- ~~[(h)]~~ ~~[(m)]~~ Total cystectomy (removal of bladder).
- (1) Probable loss of penile erection and ejaculation in the male.
- (2) Damage to organs next to bladder.
- (3) This procedure will require an alternate method of urinary drainage (urine will need a new place to collect or empty from the body).
- ~~[(i)]~~ ~~[(n)]~~ Radical cystectomy.
- (1) Probable loss of penile erection and ejaculation in the male.
- (2) Damage to organs next to bladder.
- (3) This procedure will require an alternate method of urinary drainage (urine will need a new place to collect or empty from the body).
- (4) Chronic (continuing) swelling of thighs, legs and feet.
- (5) Recurrence or spread of cancer if present.
- ~~[(j)]~~ ~~[(o)]~~ Partial cystectomy (removal of a portion of the bladder [partial removal of bladder]).
- (1) Leakage of urine at surgical site.
- (2) Incontinence (difficulty with control of urine flow).
- (3) Backward flow of urine from bladder into ureter (tube between kidney and bladder).
- (4) Blockage of urine.
- (5) Damage to organs next to bladder.
- ~~[(k)]~~ Cystolithotomy (surgical removal of stone(s) from the bladder).
- (1) Injury to bladder or surrounding organs.
- (2) Urinary incontinence (inability to control release of urine from bladder).
- ~~[(l)]~~ Cystolitholapaxy (cystoscopic crushing and removal of bladder stone(s)).
- (1) Injury to bladder.
- (2) Scarring/injury of urethra (tube from bladder to outside).
- ~~[(m)]~~ Cystostomy (placement of tube into the bladder). Injury to bladder or surrounding organs.
- ~~[(n)]~~ Diverticulectomy of the bladder (removal of outpouching of the bladder).
- (1) Injury to bladder or surrounding organs.
- (2) Urinary incontinence (inability to control release of urine from bladder).
- ~~[(o)]~~ ~~[(p)]~~ Urinary diversion (ileal conduit, colon conduit).
- (1) Blood chemistry abnormalities requiring medication.
- (2) Development of stones, strictures (scars or narrowings) or infection in the kidneys, ureter or bowel (intestine).
- (3) Leakage of urine at surgical site.
- (4) This procedure will require an alternate method of urinary drainage (urine will need a new place to collect or empty from the body).
- ~~[(p)]~~ ~~[(q)]~~ Ureterosigmoidostomy attachment of ureters (tubes between kidney and bladder to the colon (large intestine)) [~~placement of kidney drainage tubes into the large bowel (intestine)~~].
- (1) Blood chemistry abnormalities requiring medication.
- (2) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).
- (3) Leakage of urine at surgical site.
- (4) Difficulty in holding urine in the rectum.
- ~~[(q)]~~ ~~[(r)]~~ Urethroplasty (construction/reconstruction/dilation [~~construction/reconstruction~~] of drainage tube from bladder to the outside).
- (1) Leakage of urine at surgical site.
- (2) Stricture formation (narrowing of urethra (tube from bladder to outside)).
- (3) Need for additional surgery.
- ~~[(r)]~~ Diverticulectomy or diverticulotomy of the urethra (repair or drainage of outpouching of the urethra).
- (1) Injury to urethra (tube from bladder to outside) with leak of urine or narrowing of urethra.
- (2) Fistula formation (connection between urethra and other pelvic structure).
- (3) Sexual dysfunction (pain with sexual intercourse, change in sensation with sex).
- (s) Percutaneous nephrostomy/stenting/stone removal.

(1) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).

(2) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.

(3) Bowel (intestinal) injury.

(4) Blood vessel injury with or without significant bleeding.

(t) Lithotripsy ("Shockwave Lithotripsy") (sound wave removal of stones from kidney and ureter).

(1) Injury to kidney, ureter (tube between kidney and bladder), or other nearby organs.

(2) Stone fragments blocking ureter.

(3) Bleeding in or around kidney or ureter.

(u) [(t)] Dialysis (technique to replace functions of kidney and clean blood of toxins).

(1) Hemodialysis.

(A) Hypotension (low blood pressure).

(B) Hypertension (high blood pressure).

(C) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.

(D) Cardiac arrhythmias (irregular heart rhythms).

(E) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).

(F) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).

(G) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(H) Allergic reactions.

(I) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(J) Pyrogenic reactions (fever).

(K) Hemolysis (rupture of red blood cells).

(L) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.

(2) Peritoneal dialysis.

(A) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.

(B) Development of hernias of umbilicus (weakening of abdominal wall or muscle).

(C) Hypertension (high blood pressure).

(D) Hypotension (low blood pressure).

(E) Hydrothorax (fluid in chest cavity).

(F) Arrhythmia (irregular heart rhythm).

(G) Perforation of the bowel (hole in intestine).

(H) Sclerosis or scarring of the peritoneum (lining of the abdomen) with loss of dialysis function.

(I) Weight gain leading to obesity.

(J) Abdominal discomfort/distension.

(K) Heartburn or reflux.

(L) Increase in need for anti-diabetic medication.

(M) Muscle weakness.

(N) Dehydration (extreme loss of body fluid).

(O) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(P) Allergic reactions.

(Q) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

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 November 20, 2024.

TRD-202405661

Dr. Noah Appel

Panel Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 438-2889



CHAPTER 603. PROCEDURES REQUIRING NO DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST B

25 TAC §603.3, §603.16

The Texas Medical Disclosure Panel (Panel) proposes amendments to §603.3, concerning Digestive System Treatments and Procedures; and §603.16, concerning Urinary System Treatments and Procedures.

BACKGROUND AND PURPOSE

These amendments are proposed in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

The purpose of these amendments is to modify the list of procedures and risks and hazards in §603.3 and §603.16 and update these sections using plain language when possible.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §603.3, Digestive System Treatments and Procedures, revises and lists additional types of digestive system treatments and procedures that the Panel has determined require no disclosure of specific risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §603.16, Urinary System Treatments and Procedures, revises and lists additional types of urinary system treatments and procedures that the Panel has de-

terminated require no disclosure of specific risks and hazards associated with them, and includes plain language explanations, where necessary.

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

The Panel 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 employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the Panel has insufficient information to determine the proposed rules' effect on the state's economy.

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

Dr. Appel 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.

The Panel is unable to provide an estimate of the number of small businesses and micro businesses affected.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years the rules are in effect, the public benefit will be that patients are better informed about the risks and hazards related to medical treatments and surgical procedures they are considering and there will be improved clarity in this chapter of the Texas Administrative Code.

Dr. Appel 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.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Debasmita Bhakta, TMDP Liaison, Health and Human Services Commission; P.O. Box 149030, Mail Code E-249, Austin, Texas, 78714-9030; fax (877) 438-5827; office (512) 438-2889, or by email to: hhsc_tmdp@hhsc.state.tx.us.

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) faxed or 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' in the subject line.

STATUTORY AUTHORITY

The amendments to the sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

The amendments to the sections implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

The Panel hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the Panel's legal authority.

§603.3. Digestive System Treatments and Procedures.

~~[(a) Appendectomy.]~~

~~[(b) Hemorrhoidectomy with fistulectomy or fissurectomy.]~~

~~[(c) Hemorrhoidectomy.]~~

~~[(a) [(d)] Incision (cutting into) or excision (removal) of perirectal tissue.~~

~~[(b) [(e)] Local excision (removal) and/or [and] destruction of a lesion of anus and/or rectum [lesion, anus and rectum].~~

~~[(f) Operations for correction of cleft palate.]~~

~~[(g) Repair of inguinal or ventral hernia.]~~

~~[(h) Repair and plastic operations on anus and rectum.]~~

~~[(i) Colonoscopy.]~~

~~[(j) Tonsillectomy with adenoidectomy.]~~

~~[(c) [(k)] Tonsillectomy without adenoidectomy.~~

§603.16. *Urinary System Treatments and Procedures.*

- ~~[(a) Nephrotomy (placement of drainage tubes).]~~
- ~~(a) [(b)] Biopsy of prostrate, bladder or urethra.~~
- ~~(b) Urethrotomy (incision of the urethra).~~
- ~~[(c) Cystolithotomy (surgical removal of stone(s) from the bladder).]~~
- ~~[(d) Cystolitholapaxy (cystoscopic crushing and removal of bladder stone(s)).]~~
- ~~[(e) Cystostomy (placement of tube into the bladder).]~~
- ~~[(f) Urethrotomy (incision of the urethra).]~~
- ~~[(g) Diverticulectomy of the bladder (removal of outpouching of the bladder).]~~
- ~~[(h) Diverticulectomy or diverticulotomy of the urethra (repair or drainage of outpouching of the urethra).]~~
- ~~[(i) Lithotripsy (sound wave removal of stones from kidney and ureter).]~~

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 November 20, 2024.

TRD-202405662

Dr. Noah Appel

Panel Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 438-2889



PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.13, §703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §703.13 and §703.26 relating the grant recipient audit threshold, unallowable grant recipient expenses, and a reference to Texas Grant Management Standards.

Background and Justification

The proposed amendment to §703.13(b) increases the grant recipient audit threshold from \$750,000 to \$1 million. The amendment harmonizes CPRIT's administrative rules with recent changes to the Texas Grant Management Standards (TxGMS) published by the Comptroller of Public Accounts. Currently, CPRIT grantees who expend \$750,000 or more in state funds must obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement. CPRIT follows the guidance in TxGMS to determine the audit threshold. On October 1, 2024, the Comptroller's of Public Accounts released a new version of TxGMS that increased the threshold to \$1 million.

CPRIT proposes amending §703.26(e) to add the following as an unallowable expense for grant recipients, "Reimbursements to employees for their out-of-pocket health insurance premium or other health care expenses which are not made through an employer-sponsored plan established under Section 105 of the Internal Revenue Code." For these expenses to be considered fringe benefits that are reimbursable from CPRIT grant funds, the employer must have an established health reimbursement arrangement program under Section 105 of the Internal Revenue Code. Thus, this amendment clarifies that CPRIT program standards for reimbursements conform to other relevant laws.

Lastly, the Institute proposes a non-substantive, technical amendment to § 703.26(b). This amendment proposes replacing an outdated reference to the Uniform Grant Management Standards (UGMS) with a reference to TxGMS. CPRIT relied on UGMS, the predecessor to TxGMS, as guidance for grant recipients and referred to it in the Institute's administrative rules. When TxGMS went into effect, CPRIT updated its administrative rules to replace references to UGMS with references to TxGMS. The proposed amendment to § 703.26(b) corrects a reference that was inadvertently excluded from the previous update.

Fiscal Note

John Ellis, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Mr. Ellis has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Mr. Ellis has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Mr. John Ellis, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than January 7, 2025. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to jellis@cpr.it.texas.gov or by facsimile transmission to 512/475-2563.

Statutory Authority

The Institute proposes the rule changes under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Mr. Ellis has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§703.13. Audits and Investigations.

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the three year period following the date the last disbursement of funds is made by the Institute or all reports required pursuant to the Grant Contract are submitted and approved, whichever date is later.

(1) A Grant Recipient shall maintain its records pertaining to the specific Grant Contract for a period of three years following the date the last disbursement of funds is made by the Institute or all reports required pursuant to the Grant Contract are submitted and approved, whichever date is later.

(2) The Grant Recipient may maintain its records in either electronic or paper format.

(b) Notwithstanding the foregoing, the Grant Recipient shall submit a single audit determination form no later than 60 days following the close of the Grant Recipient's fiscal year. The Grant Recipient shall report whether the Grant Recipient has expended \$1 million [\$750,000] or more in state awards during the Grant Recipient's fiscal year. If the Grant Recipient has expended \$1 million [\$750,000] or more in state awards in its fiscal year, the Grant Recipient shall obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement as defined by the American Institute of Certified Public Accountants and pursuant to guidance provided in subsection (e) of this section.

(1) The audited time period is the Grant Recipient's fiscal year.

(2) The audit must be submitted to the Institute within thirty (30) days of receipt by the Grant Recipient but no later than nine (9) months following the close of the Grant Recipient's fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a

written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient's request for additional time must be submitted on or before the due date of the required audit and corrective action plan. For purposes of this rule, the "due date of the required audit" is no later than nine (9) months following the close of the Grant Recipient's fiscal year.

(C) Approval of the Grant Recipient's request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute's approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to be awarded a new Grant Award or a continuation Grant Award until the required audit and corrective action plan are submitted. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may remain eligible to be awarded a new Grant Award or a continuation Grant Award unless the Institute's approval declines to continue eligibility during the pendency of the delinquency.

(e) For purposes of this rule, an agreed upon procedures engagement is one in which an independent certified public accountant is hired by the Grant Recipient to issue a report of findings based on specific procedures to be performed on a subject matter.

(1) The option to perform an agreed upon procedures engagement is intended for a non-profit or for-profit Grant Recipient that is not subject to Generally Accepted Government Audit Standards (also known as the Yellow Book) published by the U.S. Government Accountability Office.

(2) The agreed upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

(3) The certified public accountant is to perform procedures prescribed by the Institute and to report his or her findings attesting to whether the Grant Recipient records are in agreement with stated criteria.

(4) The agreed upon procedures apply to all current year expenditures for Grant Awards received by the Grant Recipient. Nothing herein prohibits the use of a statistical sample consistent with the American Institute of Certified Public Accountants' guidance regarding government auditing standards and 2 CFR Part 200, Subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

(5) At a minimum, the agreed upon procedures report should address:

- (A) Processes and controls;
- (B) The Grant Contract;
- (C) Indirect Costs;
- (D) Matching Funds, if appropriate;

(E) Grant Award expenditures (payroll and non-payroll related transactions);

(F) Equipment;

(G) Revenue Sharing and Program Income;

(H) Reporting; and

(I) Grant Award closeout.

(6) The certified public accountant should consider the specific Grant Mechanism and update or modify the procedures accordingly to meet the requirements of each Grant Award and the Grant Contract reviewed.

(f) For purposes of this rule, a program specific audit should address:

(1) Sample of awards;

(2) Reporting;

(3) Indirect costs;

(4) Matching funds, if appropriate;

(5) Expenditures;

(6) Expenditure Reporting;

(7) Personnel Level of Effort Reporting;

(8) Grant Closeout;

(9) Performance Measures;

(10) Publications and Acknowledgements;

(11) Title to equipment;

(12) Contract certifications;

(13) Changes in Principal Investigator or Program Director;

(14) Intellectual Property and revenue sharing;

(15) Early termination and event of default; and

(16) Any other issue identified by the Institute, the Grant Recipient, or the person performing the program specific audit.

(g) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

§703.26. *Allowable Costs.*

(a) A cost is an Allowable Cost and may be charged to the Grant Award if it is reasonable, allocable, and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost; and is necessary for the performance of the Grant Award defined in the Scope of Work in the Grant Contract.

(2) A cost is allocable if the cost:

(A) Benefits the Grant Award either directly or indirectly, subject to Indirect Cost limits stated in the Grant Contract;

(B) Is assigned the Grant Award in accordance with the relative benefit received;

(C) Is allowed or not prohibited by state laws, administrative rules, contractual terms, or applicable regulations;

(D) Is not included as a cost or used to meet Matching Fund requirements for any other Grant Award in either the current or a prior period; and

(E) Conforms to any limitations or exclusions set forth in the applicable cost principles, administrative rules, state laws, and terms of the Grant Contract.

(3) A cost is adequately documented if the cost is supported by the organization's accounting records and documented consistent with §703.24 of this title (relating to Financial Status Reports).

(b) Grant Award funds must be used for Allowable Costs as provided by the terms of the Grant Contract, Chapter 102, Texas Health and Safety Code, the Institute's administrative rules, and the Texas Grant Management Standards (TxGMS) adopted by the Comptroller's Office. If guidance from TxGMS [the Uniform Grant Management Standards] on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(c) An otherwise Allowable Cost will not be eligible for reimbursement if the Grant Recipient incurred the expense outside of the Grant Contract term, unless the Grant Recipient has received written approval from the Institute's Chief Executive Officer to receive reimbursement for expenses incurred prior to the effective date of the Grant Contract.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(2) Contributions to a contingency reserve or any similar provision for unforeseen events.

(3) Contributions and donations made to any individual or organization.

(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(7) An honorary gift or a gratuitous payment.

(8) Interest and other financial costs related to borrowing and the cost of financing.

(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(10) Liability insurance coverage.

(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(12) Professional association fees or dues for an individual employed by the Grant Recipient. Professional association fees or dues for the Grant Recipient's membership in business, technical, and professional organizations may be allowed, with prior approval from the Institute, if:

(A) the professional association is not involved in lobbying efforts; and

(B) the Grant Recipient demonstrates how membership in the professional association benefits the Grant Award project(s).

(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor working on a Grant Award project employs an individual who is a Relative of the Principal Investigator, Program Director, Company Representative, Authorized Signing Official, or any person designated as Key Personnel for the same Grant Award project (collectively referred to as "affected Relative"), and the Grant Recipient will be paying the subcontractor with Grant Award funds for any portion of the affected Relative's salary or the Relative submits payment requests on behalf of the subcontractor to the Grant Recipient for payment with Grant Award funds.

(A) For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds if the Grant Recipient notifies the Institute prior to finalizing the subcontract. The Chief Executive Officer must notify the Oversight Committee in writing of the decision to allow reimbursement for the otherwise unallowable expense.

(B) Nothing herein is intended to supersede a Grant Recipient's internal policies, to the extent that such policies are stricter.

(16) Fundraising.

(17) Tips or gratuities.

(18) Reimbursements to employees for their out-of-pocket health insurance premium or other health care expenses which are not made through an employer-sponsored plan established under Section 105 of the Internal Revenue Code.

(f) Pursuant to Texas Health and Safety Code Section 102.203(b) the Institute may authorize reimbursement for one or more of the following expenses incurred by a cancer clinical trial participant that are associated with participating in a clinical trial and included in the Grant Recipient's Approved Budget:

(1) transportation, including car mileage, parking, bus fare, taxi or ride hailing fare exclusive of tips, and commercial economy class airfare within the borders of the State of Texas;

(2) lodging; and

(3) any cost reimbursed under a cancer clinical trial participation program established pursuant to Texas Health and Safety Code Chapter 51 (relating to Cancer Clinical Trial Participation Program).

(g) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

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 November 21, 2024.

TRD-202405674

Heidi McConnell

Deputy Executive Officer / Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 463-3190



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 52. CONTRACTING FOR COMMUNITY SERVICES

SUBCHAPTER A. APPLICATION AND DEFINITIONS

26 TAC §52.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §52.1, concerning Application.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code Chapter 546 that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§52.1. Application.

(a) Except as provided in subsections (b) - (e) of this section, all of the sections of this chapter apply to an applicant or contractor for one or more of the following programs and services:

(1) Medicaid waiver programs and services under Title XIX, §1915(c) of the Social Security Act as follows:

(A) the Community Living Assistance and Support Services (CLASS) Program:

- (i) CLASS-case management agency (CMA);
- (ii) CLASS-continued family services (CFS);
- (iii) CLASS-direct service agency (DSA); and
- (iv) CLASS-support family services (SFS);

(B) the Deaf Blind with Multiple Disabilities (DBMD) Program;

(C) the Home and Community-based Services (HCS) Program;

- (D) the Texas Home Living (TxHmL) Program; and
- (E) transition assistance services (TAS);

(2) Medicaid state plan programs or services under Title XIX, §1902(a)(10)(A) of the Social Security Act as follows:

- (A) hospice;
- (B) the Primary Home Care (PHC) Program;
- (C) the Community Attendant Services (CAS) Program; and
- (D) day activity and health services (DAHS);

(3) services and programs under Title XX, Subtitle A of the Social Security Act as follows:

- (A) adult foster care (AFC);
- (B) emergency response services;
- (C) the Home-Delivered Meals (HDM) Program;
- (D) residential care (RC);
- (E) DAHS;
- (F) the Family Care (FC) Program;
- (G) the Consumer Managed Personal Attendant Services (CMPAS) Program;
- (H) special services to persons with disabilities (SSPD);

and

- (I) SSPD - 24-hour shared attendant care; and

(4) financial management services under the consumer directed services option authorized under Texas Government Code Chapter 546, Subchapter C [~~§§531.051~~] as follows:

(A) financial management services agency (FMSA)--CLASS;

- (B) FMSA-DBMD;
- (C) FMSA-HCS;
- (D) FMSA-PHC/CAS/FC; and
- (E) FMSA-TxHmL.

(b) Section 49.310 of this chapter (relating to Abuse, Neglect, and Exploitation Allegations), Subchapter D of this chapter (relating to Monitoring and Investigation of a Contractor), and Subchapter E, Divisions 2 and 3 of this chapter (relating to Immediate Protection; and Actions) do not apply to a contractor that has a contract for:

- (1) the HCS Program; or
- (2) the TxHmL Program.

(c) Subchapter D of this chapter and §49.523 of this chapter (relating to Referral Hold) do not apply to a contractor that has a contract for hospice.

(d) Sections 49.202 - 49.205 and §§49.207 - 49.211 of this chapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) and Subchapter G of this chapter (relating to Application Denial Period) do not apply to a contractor that has a contract for:

- (1) the CMPAS Program;
- (2) SSPD; or
- (3) SSPD - 24-hour shared attendant care.

(e) Section 49.310 of this chapter does not apply to a contractor that has a contract for one or more of the following programs or services:

- (1) a CLASS-CMA;
- (2) a CLASS-DSA;
- (3) the CMPAS Program;
- (4) the DBMD Program;
- (5) an FMSA-CLASS;
- (6) an FMSA-DBMD;
- (7) an FMSA-HCS;
- (8) an FMSA-PHC/CAS/FC;
- (9) an FMSA-TxHmL;
- (10) the PHC Program;
- (11) the CAS Program; and
- (12) the FC Program.

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

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

TRD-202405680

Karen Ray
 Chief Counsel
 Health and Human Services Commission
 Earliest possible date of adoption: January 5, 2025
 For further information, please call: (512) 221-9021



CHAPTER 259. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

SUBCHAPTER A. DEFINITIONS, DESCRIPTION OF SERVICES, AND EXCLUDED SERVICES

26 TAC §259.5

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §259.5, concerning Definitions.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates references to existing laws.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapters 521 and 543A.

The amendment affects Texas Government Code §531.0055 and Chapters 521 and 543A.

§259.5. *Definitions.*

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

(1) Abuse--

- (A) physical abuse;
- (B) sexual abuse; or
- (C) verbal or emotional abuse.

(2) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

- (A) interactions with the individual;
- (B) availability to the individual for assistance or support when needed; and
- (C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adaptive aids--A Community Living Assistance and Support Services (CLASS) Program service that:

- (A) enables an individual to retain or increase the ability to perform activities of daily living (ADLs) or perceive, control, or communicate with the environment in which the individual lives; and
- (B) meets one of the following criteria:

(i) is an item included in the list of adaptive aids in the *Community Living Assistance and Support Services Provider Manual*; or

(ii) is the repair or maintenance of an item on the list of adaptive aids in the *Community Living Assistance and Support Services Provider Manual* that is not covered by a warranty.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by an adaptive behavior screening assessment.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. There are four adaptive behavior levels ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using the current version of one of the following assessment instruments:

- (A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);
- (B) Inventory for Client and Agency Planning (ICAP);
- (C) Scales of Independent Behavior; or
- (D) Vineland Adaptive Behavior Scales.

(7) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(8) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(9) Alarm call--A signal transmitted from an individual's Community First Choice emergency response services (CFC ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(10) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code (THSC), Chapter 247, Assisted Living Facilities.

(11) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

(12) Aquatic therapy--A specialized therapy that involves a low-risk exercise method performed in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(13) Audio-only--An interactive, two-way audio communication platform that only uses sound.

(14) Auditory integration training/auditory enhancement training--A CLASS Program service that provides specialized training to assist an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(15) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(16) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific outcomes and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(17) Behavioral support--A CLASS Program service that provides specialized interventions to assist an individual in increasing adaptive behaviors and replacing or modifying behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training and consulting with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluating the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluating the plan's effectiveness; and

(F) counseling and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(18) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(19) Calendar day--Any day, including weekends and holidays.

(20) Case management--A CLASS Program service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's individual plan of care (IPC);

(D) coordinating the provision of CLASS Program services and CFC services;

(E) monitoring the effectiveness of the CLASS Program services and CFC services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services and non-CFC services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(21) Case manager--A service provider of case management.

(22) Catchment area--As determined by the Texas Health and Human Services Commission (HHSC), a geographic area composed of multiple Texas counties.

(23) CDS option--Consumer directed services option. A service delivery option defined in 40 TAC §41.103 (relating to Definitions).

(24) CFC--Community First Choice.

(25) CFC ERS--CFC emergency response services. A CFC service that provides backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(26) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the DSA or a contractor of the DSA.

(27) CFC FMS--CFC financial management services. A CFC service provided to an individual who receives only CFC PAS/HAB through the CDS option.

(28) CFC PAS/HAB--CFC personal assistance services/habilitation. A CFC service:

(A) that consists of:

(i) personal assistance services, which provides assistance to an individual in performing ADLs and instrumental activities of daily living (IADLs) based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation, which provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, including:

(I) self-care;

- (II) personal hygiene;
- (III) household tasks;
- (IV) mobility;
- (V) money management;
- (VI) community integration, including how to get around in the community;
- (VII) use of adaptive equipment;
- (VIII) personal decision making;
- (IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and
- (X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(29) CFC support consultation--A CFC service that provides support consultation to an individual who receives only CFC PAS/HAB through the CDS option.

(30) CFC support management--A CFC service that provides training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB.

(31) CFR--Code of Federal Regulations.

(32) CFS--Continued family services. A CLASS Program service described in Subchapter E of this chapter (relating to Support Family Services and Continued Family Services).

(33) CLASS Program--The Community Living Assistance and Support Services Program.

(34) CMA--Case management agency. A program provider that has a contract with HHSC to provide case management.

(35) CMS--The Centers for Medicare & Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(36) Cognitive rehabilitation therapy--A CLASS Program service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(37) Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(38) Contract--A provisional contract that HHSC enters into in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than 3 years, not including any extension agreed to in accordance with 40 TAC §49.208(e) or a standard contract that HHSC enters into in accordance with 40 TAC §49.209 (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with 40 TAC §49.209(d).

(39) Controlling person--A person who:

- (A) has an ownership interest in a program provider;
- (B) is an officer or director of a corporation that is a program provider;
- (C) is a partner in a partnership that is a program provider;
- (D) is a member or manager in a limited liability company that is a program provider;
- (E) is a trustee or trust manager of a trust that is a program provider; or
- (F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(40) Denial--An action taken by HHSC that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(41) Dental treatment--A CLASS Program service that:

(A) consists of the following:

(i) emergency dental treatments, which are procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatments, which are examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatments, which include fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatments, which are procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labiolingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(42) DFPS--The Texas Department of Family and Protective Services.

(43) Dietary services--A CLASS Program service that provides nutrition services, as defined in Texas Occupations Code §701.002.

- (44) Direct services--Includes the following services:
- (A) CLASS Program services other than case management, FMS, support consultation, support family services, CFS, and TAS;
 - (B) CFC PAS/HAB;
 - (C) CFC ERS; and
 - (D) CFC support management.

(45) DSA--Direct services agency. A program provider that has a contract with HHSC to provide direct services.

(46) Employment assistance--A CLASS Program service that provides assistance to an individual to help the individual locate competitive employment in the community to the same degree of access as individuals not receiving CLASS Program services.

(47) Enrollment IPC--The first individual plan of care (IPC) for an individual developed before the individual's enrollment into the CLASS Program.

(48) Enrollment IPP--The first individual program plan (IPP) for an individual developed before the individual's enrollment into the CLASS Program in accordance with §259.67 of this chapter (relating to Development of IPPs).

(49) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(50) FMS--Financial management services. A CLASS Program service that is defined in 40 TAC §41.103 and is provided to an individual participating in the CDS option.

(51) FMSA--Financial management services agency. An entity, as defined in 40 TAC §41.103, that provides FMS.

(52) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(53) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(54) Good cause--As determined by HHSC, a reason outside the control of a CFC ERS provider that is an acceptable reason for the CFC ERS provider's failure to comply.

(55) Group setting--A setting, other than an individual's residence, in which more than one individual or other person is receiving pre-vocational services or a similar service.

(56) Habilitation--A CLASS Program service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting in person with an individual who is awake to train the individual in the following activities:

- (i) self-care;

- (ii) personal hygiene;
- (iii) household tasks;
- (iv) mobility;
- (v) money management;
- (vi) community integration;
- (vii) use of adaptive equipment;
- (viii) management of caregivers;
- (ix) personal decision making;
- (x) interpersonal communication;
- (xi) reduction of challenging behaviors;
- (xii) socialization and the development of relationships;
- (xiii) participating in leisure and recreational activities;
- (xiv) use of natural supports and typical community services available to the public;
- (xv) self-administration of medication; and
- (xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting in person with an individual who is awake to assist the individual in the following activities:

- (I) self-care;
- (II) personal hygiene;
- (III) ambulation and mobility;
- (IV) money management;
- (V) community integration;
- (VI) use of adaptive equipment;
- (VII) self-administration of medication;
- (VIII) reinforce any therapeutic goal of the individual;

individual;

- (IX) provide transportation to the individual; and
- (X) protect the individual's health, safety and security;

security;

(ii) interacting in person or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting in person with an individual:

- (I) shopping for the individual;
- (II) planning or preparing meals for the individual;
- (III) housekeeping for the individual;
- (IV) procuring or preparing the individual's medication; or
- (V) arranging transportation for the individual;

and

(C) habilitation delegated, which is tasks delegated by a registered nurse (RN) to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(57) Health-related tasks--Specific tasks related to the needs of an individual that can be delegated or assigned by a licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. These include:

(A) tasks delegated by a registered nurse (RN);

(B) health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and

(C) activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(58) HHSC--The Texas Health and Human Services Commission.

(59) Hippotherapy--A specialized therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §259.355(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(60) Hospital--A public or private institution that is licensed or is exempt from licensure in accordance with THSC Chapters 13, 241, 261, or 552.

(61) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(62) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program Services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(63) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(64) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form used to determine the level of care (LOC) for an individual.

(65) Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(66) Individual transportation plan--A written plan developed by an individual's service planning team and documented on the

HHSC individual transportation plan form. An individual transportation plan describes how transportation as a habilitation activity will be delivered to support an individual's desired goals and outcomes identified in the IPP.

(67) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(68) In person or in-person--Within the physical presence of another person. In person or in-person does not include using video-conferencing or a telephone.

(69) Institution for mental diseases--Has the meaning set forth in 42 CFR §435.1010.

(70) Institutional services--Medicaid-funded services provided in a nursing facility or in an ICF/IID.

(71) Intellectual disability--Consistent with THSC §591.003, significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(72) IPC--Individual plan of care. A written plan developed by an individual's service planning team and documented on the HHSC Individual Plan of Care form. An IPC:

(A) documents:

(i) the type and amount of each CLASS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year; and

(ii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(73) IPC cost--Estimated annual cost for CLASS Program services on an IPC.

(74) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of the enrollment IPC, as described in §259.65(g) of this chapter (relating to Development of an Enrollment IPC), through the last calendar day of the 11th month after the month in which enrollment occurred; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of the renewal IPC, as described in §259.77(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(75) IPP--Individual program plan. A written plan developed in accordance with §259.67 of this chapter (relating to Development of IPPs) and documented on an HHSC Individual Program Plan form.

(76) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(77) Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code Chapter 301.

(78) Licensed vocational nursing--A CLASS Program service that provides vocational nursing, as defined in Texas Occupations Code §301.002.

(79) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(80) LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data on the ID/RC Assessment.

(81) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001(11) [§536.001].

(82) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(83) Massage therapy--A specialized therapy defined in Texas Occupations Code §455.001.

(84) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(85) Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(86) Mental health facility--A facility licensed in accordance with THSC Chapter 577.

(87) MESAV--Medicaid Eligibility Service Authorization Verification. The automated system that contains information regarding an individual's Medicaid eligibility and service authorizations.

(88) Military family member--A person who is the spouse or child, regardless of age, of:

- (A) a military member; or
- (B) a former military member.

(89) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(90) Minor home modifications--A CLASS Program service that:

(A) makes a physical adaptation to an individual's residence that:

(i) is necessary to address the individual's specific needs; and

(ii) enables the individual to function with greater independence in the individual's residence or to control his or her environment; and

(B) meets one of the following criteria:

(i) is included on the list of minor home modifications in the *Community Living Assistance and Support Services Provider Manual*; or

(ii) is the repair or maintenance of a minor home modification purchased through the CLASS Program that:

(I) is needed after one year has elapsed from the date the minor home modification is complete;

(II) is needed for a reason other than the minor home modification was intentionally damaged, as described in §259.285(c) of this chapter (relating to Repair or Replacement of Minor Home Modification); and

(III) is not covered by a warranty.

(91) Music therapy--A specialized therapy that uses musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(92) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(93) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(94) Nursing--One or more of the following CLASS Program services:

- (A) licensed vocational nursing;
- (B) registered nursing;
- (C) specialized licensed vocational nursing; and
- (D) specialized registered nursing.

(95) Nursing facility--A facility that is licensed or is exempt from licensure in accordance with THSC Chapter 242.

(96) Occupational therapy--A CLASS Program service that provides occupational therapy, as described in Texas Occupations Code §454.006.

(97) Own home or family home--A residence that is not:

- (A) an ICF/IID;
- (B) a nursing facility;
- (C) an ALF;
- (D) a residential child-care facility unless it is an agency foster home;
- (E) a hospital;
- (F) a mental health facility;
- (G) an inpatient chemical dependency treatment facility;
- (H) a residential facility operated by the Texas Workforce Commission;
- (I) a residential facility operated by the Texas Juvenile Justice Department;
- (J) a jail; or
- (K) a prison.

(98) PAS/HAB plan--Personal Assistance Services/Habilitation Plan. A written plan developed by an individual's service planning team and documented on the HHSC Personal Assistance Services (PAS)/Habilitation Plan form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(99) Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(100) Person-centered planning process--The process described in §259.57 of this chapter (relating to Person-Centered Planning Process).

(101) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(102) Physical therapy--A CLASS Program service that provides physical therapy, as defined in Texas Occupations Code §453.001.

(103) Physician--Consistent with §558.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health or hospice services for the individual in accordance with Texas Occupations Code §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service, if the person is not engaged in private practice, in accordance with the Texas Occupations Code §151.052(a)(8).

(104) Platform--This term has the meaning set forth in Texas Government Code §521.0001(10) [§531.001(4-d)].

(105) Prevocational services--A CLASS Program service that provides services that are not job-task oriented and are provided to an individual whose service planning team does not expect to be employed, without receiving supported employment, within one year after the date prevocational services begin. Prevocational services prepare an individual for competitive employment and consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's IPP for prevocational services;

(iii) that are essential to obtaining and retaining competitive employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain competitive employment; and

(E) transportation between the individual's place of residence and a group setting in which prevocational services are provided when other forms of transportation are unavailable or inaccessible.

(106) Program provider--A person that has a contract with HHSC to provide CLASS Program services, excluding an FMISA. In the CLASS Program, there are two types of program providers, a DSA and a CMA.

(107) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(108) Recreational therapy--A specialized therapy that provides recreational or leisure activities that assist an individual to restore, remediate, or habilitate the individual's level of functioning and independence in life activities; promote health and wellness; and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(109) Reduction--An action taken by HHSC as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by HHSC on the prior IPC.

(110) Registered nursing--A CLASS Program service that provides professional nursing, as defined in Texas Occupations Code §301.002.

(111) Related condition--As defined in 42 CFR §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(112) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *Community Living Assistance and Support Services Provider Manual*.

(113) Renewal IPC--An IPC developed in accordance with §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(114) Residential child-care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(115) Respite--A CLASS Program service that provides temporary assistance and support with an individual's ADLs if the individual has the same residence as a person who routinely provides the assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of transportation as a habilitation activity or CFC PAS/HAB or an employee in the CDS option of transportation as a habilitation activity or CFC PAS/HAB, HHSC does not approve respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with ADLs to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or CFS, HHSC does not approve respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving CFS, the individual does not receive respite on the same day the individual receives CFS; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite consists of the following:

(i) interacting in person with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety, and security;

(ii) interacting in person or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities, which may not involve interacting in person with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication;

(V) arranging transportation for the individual; or

(VI) protecting the individual's health, safety, and security while the individual is asleep.

(116) Responder--A person designated to respond to an alarm call activated by an individual.

(117) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §259.79 of this chapter to add a new CLASS Program service or CFC service or change the amount of an existing service.

(118) RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code Chapter 301.

(119) Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(120) Service backup plan--A written plan developed in accordance with §259.89 of this chapter (relating to Service Backup Plans) to ensure continuity of critical program services if service delivery is interrupted.

(121) Service planning team--A team consisting of:

(A) the individual;

(B) if applicable, the individual's LAR or actively involved person;

(C) the individual's case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual, LAR, or actively involved person, including an managed care organization service coordinator, a family member, a friend, and a teacher; and

(F) a person selected by the DSA, with the approval of the individual and LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(122) Service provider--A person who is an employee or contractor of a DSA who provides a direct service.

(123) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff person, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff person, volunteer, or controlling person became a service provider, staff person, volunteer, or controlling person.

(124) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(125) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(126) Specialized licensed vocational nursing--A CLASS Program service that provides licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(127) Specialized registered nursing--A CLASS Program service that provides registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(128) Specialized therapies--A CLASS Program service that promotes skills development, maintains skills, decreases inappropriate behaviors, facilitates emotional well-being, creates opportunities for socialization, or improves physical and medical status and consists of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding.

(129) Speech and language pathology--A CLASS Program service that provides speech-language pathology, as defined in Texas Occupations Code §401.001.

(130) Staff person--A full-time or part-time employee of a program provider.

(131) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(132) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(133) Support consultation--A CLASS Program service that is defined in 40 TAC §41.103 and may be provided to an individual who chooses to participate in the CDS option.

(134) SFS--Support family services. A CLASS Program service that is described in Subchapter E of this chapter.

(135) Supported employment--A CLASS Program service that provides assistance to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(136) Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(137) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(138) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas State Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(139) Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(140) TAS--Transition assistance services. A CLASS Program service provided in accordance with Chapter 272 of this title (related to Transition Assistance Services) to an individual who is receiving institutional services and is eligible for and enrolling into the CLASS Program.

(141) Telehealth services--This term has the meaning set forth in Texas Occupations Code §111.001.

(142) Texas Workforce Commission--The state agency established under Texas Labor Code Chapter 301.

(143) Therapeutic horseback riding--A specialized therapy that:

(A) involves an individual interacting with and riding on horses; and

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual.

(144) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(145) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(146) Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(147) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

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

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 275. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES (CMPAS) PROGRAM

SUBCHAPTER B. ELIGIBILITY AND SERVICE PLANS

26 TAC §275.29

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §275.29, concerning Assessment and Eligibility Determination.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§275.29. *Assessment and Eligibility Determination.*

(a) Within 30 days after the provider receives a referral from DADS regional office, the provider must:

(1) ensure that the assessor of need conducts an initial on-site assessment with the applicant;

(2) determine CMPAS Program eligibility in accordance with §44.201 of this subchapter (relating to Eligibility Criteria);

(3) inform the applicant, both orally and in writing, of all applicable publicly funded programs that offer attendant services and allow the applicant to choose whether to participate in CMPAS;

(4) keep in the applicant's record a written record of the notification given in accordance with paragraph (3) of this subsection and the applicant's signed and dated acknowledgement and choice document;

(5) assess the applicant's service needs by using the DADS Needs Assessment Questionnaire and Task/Hour Guide form available at www.dads.state.tx.us; and

(6) for an eligible applicant:

(A) develop a service plan based on the results of the assessment questionnaire that:

(i) includes the number of hours and tasks negotiated between the applicant and the assessor of need; and

(ii) is agreed to and signed by the applicant and assessor of need;

(B) determine with the applicant the amount of the applicant's co-payment under §44.501 of this chapter (relating to Determining an Individual's Co-payment) and explain to the applicant that making co-payments is required to remain eligible for CMPAS;

(C) explain orally and give written information to the applicant on the available service delivery options described in Subchapter D of this chapter (relating to Service Delivery Options);

(D) have the applicant sign and date a service delivery option choice document; and

(E) keep the signed and dated service delivery choice document in the applicant's file.

(b) If the applicant's service plan includes a health-related task, the provider must:

(1) before an attendant performs a health-related task, verify that the task:

(A) may be performed under Texas Government Code §546.0104 [, §531.051(e)];

(B) does not require nurse or physician delegation; or

(C) is properly delegated under:

(i) 22 TAC Part 11, Chapter 225; or

(ii) Texas Occupations Code, Chapter 157; and

(2) if a health-related task is delegated, maintain records in the applicant's file that:

(A) identify and are signed and dated by the delegating physician or registered nurse;

(B) include the name of the individual, the names of the attendants performing the delegated health-related tasks for the individual, and a description of the specific health-related tasks to be performed; and

(C) comply with the Texas Nurse Practice Act, the Medical Practice Act, and any other applicable state or federal law.

(c) The provider must notify an applicant who is not eligible for services in writing by mailing the DADS Notification of Community Care Services form within three days after the date of the decision. This form notifies the applicant of the right to a fair hearing and explains how to request a fair hearing.

(d) The provider must send DADS written notice of the disposition of the referral. The provider must ensure that DADS receives the notice within 30 days after the provider receives the referral from DADS. If the provider does not notify DADS within the 30-day period, DADS may impose contract sanctions on the provider.

(e) The provider must document any failure to complete the assessment activities within the 30-day period, including the reasons for the delay, the provider's ongoing efforts to complete the assessment, and the anticipated date of completion. The reasons for delay must be beyond the provider's control. The provider must send the documentation of delays to the DADS regional designee by the due date in subsection (d) of this section.

(f) Upon receiving notice from the provider of an applicant's eligibility to receive services in the CMPAS Program, the DADS regional designee will enter the CMPAS authorization in DADS Service Authorization System.

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 November 21, 2024.

TRD-202405682

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 280. PEDIATRIC TELECONNECTIVITY RESOURCE PROGRAM FOR RURAL TEXAS

26 TAC §§280.1, 280.3, 280.5

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §280.1, concerning Purpose; §280.3, concerning Definitions; and §280.5, concerning Grant Program Administration.

BACKGROUND AND PURPOSE

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

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 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 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 because the amendments only update references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 24R085" 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 Chapter 548.

The amendments affect Texas Government Code §531.0055 and Chapter 548.

§280.1. Purpose.

(a) This chapter implements Texas Government Code Chapter 548, Subchapter H [Texas Government Code, Chapter 541], which authorizes the Texas Health and Human Services Commission (HHSC) to establish a pediatric tele-connectivity resource program for rural Texas by awarding grants to support nonurban health care facilities in establishing the capability to provide pediatric telemedicine services.

(b) The Pediatric Tele-Connectivity Resource Program for Rural Texas will continue until all appropriations are expended.

§280.3. Definitions.

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

(1) Grant Program--The Pediatric Tele-Connectivity Resource Program for Rural Texas.

(2) Grant recipient--A nonurban health care facility awarded a grant under this chapter.

(3) HHSC--The Texas Health and Human Services Commission.

(4) Nonurban health care facility--As defined by Texas Government Code §548.0351 [§541.001(1)].

(5) Pediatric tele-specialty provider--As defined by Texas Government Code §548.0351 [§541.001(4)].

(6) Telemedicine medical services--As defined by Texas Government Code §548.0351 [§541.004(7)].

§280.5. *Grant Program Administration.*

(a) Use of grant funds. A grant recipient uses grant funds awarded under this chapter:

(1) to purchase equipment necessary for implementing telemedicine medical services;

(2) to modernize the facility's information technology infrastructure and secure information technology support to ensure an uninterrupted two-way video signal that is compliant with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as referenced in Texas Government Code §548.0353 [Texas Government Code, §541.003];

(3) to pay a contracted pediatric tele-specialty provider for telemedicine medical services; or

(4) to pay for other activities, services, supplies, facilities, resources, and equipment that HHSC determines necessary for the grant recipient to use telemedicine medical services.

(b) Role of HHSC. HHSC will administer funding in the form of grants to an eligible nonurban health care facility.

(c) Grant eligibility requirements. To be eligible for a grant under this chapter, a nonurban health care facility must:

(1) have a quality assurance program that measures the compliance of the facility's health care providers with the facility's medical protocols;

(2) have at least one full-time equivalent physician, on staff, who has training and experience in pediatrics and one person who is responsible for ongoing nursery and neonatal support and care;

(3) have a designated neonatal intensive care unit or an emergency department;

(4) have a commitment to obtaining neonatal or pediatric education from a tertiary facility to expand the facility's depth and breadth of telemedicine medical service capabilities; and

(5) have the capability of maintaining records and producing reports that measure the effectiveness of a grant received by the facility under this chapter.

(d) Role of the stakeholder workgroup. HHSC may establish a stakeholder workgroup to assist HHSC:

(1) in developing, implementing, and evaluating the Grant Program; and

(2) in preparing a report on the results and outcomes of the grants awarded under this chapter.

(e) Stakeholder workgroup member compensation. A stakeholder workgroup member is not entitled to any form of compensation for serving on the workgroup and may not be reimbursed for travel or other expenses incurred while conducting the business of the workgroup.

(f) Compliance. A grant recipient must comply with:

(1) the requirements described in this chapter; and

(2) all other applicable state and federal laws, rules, regulations, policies, and guidelines.

(g) Program evaluation. HHSC evaluates the use of grant funds based on criteria as defined by HHSC.

(h) Grant funding distribution. HHSC distributes funding on a schedule defined by HHSC.

(i) Reporting responsibilities and protocol. No later than December 1 of each even-numbered year, HHSC reports the results and outcomes of grants awarded under this chapter to the Governor and members of the Legislature. The report is comprised of information provided by the grant recipient as defined by HHSC.

(j) Audits. A grant recipient is subject to audit and recovery of grant funds by the HHSC Office of the Inspector General, as provided in 1 TAC, §371.11 (relating to Scope).

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 November 21, 2024.

TRD-202405683

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §306.45, concerning Definitions; and §306.273, concerning MH Case Management Employee Competencies.

BACKGROUND AND PURPOSE

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

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 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 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 because the amendments only update references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

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

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 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 24R085" in the subject line.

SUBCHAPTER B. STANDARDS OF CARE IN CRISIS STABILIZATION UNITS

DIVISION 1. GENERAL REQUIREMENTS

26 TAC §306.45

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546 and 547.

The amendment affects Texas Government Code §531.0055 and Chapter 546 and 547.

§306.45. Definitions.

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

(1) Administrator--A person or entity that has authority to represent a facility and is responsible for implementing and supervising its administrative policies and procedures and for administratively supervising the provision of services to individuals on a day-to-day basis.

(2) Administrator's designee--A staff member designated in a facility's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual for crisis stabilization services based on a physician's order issued in accordance with §306.55 (relating to Voluntary Admission Criteria and Intake Process) and §306.57 (relating to Involuntary Admission Criteria and Intake Process) of this subchapter.

(4) Admission examination--A psychiatric examination and physical assessment conducted by a physician, to determine if an individual requesting voluntary admission to an inpatient mental health facility meets clinical criteria for admission, in accordance with Texas Health and Safety Code §572.0025(f).

(5) Adolescent--An individual at least 13 years of age, but younger than 18 years of age.

(6) Adult--An individual 18 years of age or older.

(7) Adult caregiver--An adult person whom a parent has authorized to provide temporary care for a child, as defined in Texas Family Code §34.0015(1).

(8) APRN--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing and as provided in Texas Occupations Code §301.152.

(9) Assessment--The administrative process an inpatient mental health facility uses to gather information from an individual to determine if the admission is clinically justified, in accordance with Texas Health and Safety Code §572.0025(h)(2), including a medical history and the problem for which the individual is seeking treatment.

(10) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(11) Child--An individual at least three years of age, but younger than 13 years of age.

(12) Confidential information--Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the information that must be protected from unauthorized use or disclosure as required

by applicable state or federal laws, and as defined in 1 TAC §390.1(5) (relating to Definitions).

(13) Crisis stabilization services--Short-term residential treatment designed to reduce acute symptoms of a mental illness or serious emotional disturbance of an individual and prevent admission of the individual to an inpatient mental health facility.

(14) CSU--Crisis stabilization unit. A short-term residential treatment unit designed to reduce an individual's acute symptoms of mental illness or serious emotional disturbance instead of admission to an inpatient mental health facility, licensed in accordance with Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

(15) Day--Calendar day, unless otherwise specified.

(16) DD--Developmental disability. As listed in Texas Health and Safety Code §531.002(15), a severe, chronic disability attributable to mental or physical impairment or a combination of mental and physical impairments that:

(A) manifest before the individual reaches 22 years of age;

(B) are likely to continue indefinitely;

(C) reflect the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) result in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(17) Discharge--The formal release of an individual from the custody and care of an inpatient mental health facility in accordance with Texas Health and Safety Code §572.004.

(18) Emergency medical condition--In accordance with the Emergency Medical Treatment & Labor Act (42 U.S.C. §1395dd) (Relating to examination and treatment for emergency medical conditions and women in labor), a medical condition manifested by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman having contractions:

(i) inadequate time to arrange a safe transfer to a hospital before delivery; or

(ii) a transfer posing a threat to the health or safety of the woman or the unborn child.

(19) General hospital--A hospital operated primarily to diagnose, care for, and treat individuals who are physically ill and licensed in accordance with Texas Health and Safety Code Chapter 241.

(20) HHSC--Texas Health and Human Services Commission or its designee.

(21) ID--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originates during the developmental period.

(22) IDT--Interdisciplinary team. A group of licensed, credentialed, and unlicensed staff members who possess the knowledge, skills, and expertise to develop and implement an individual's treatment or recovery plan and also includes:

(A) the individual's treating physician;

(B) the individual, and the individual's LAR or adult caregiver, if applicable;

(C) the staff members identified in the treatment or recovery plan as responsible for providing or ensuring the provision of each treatment in accordance with §568.61(c)(1)(E)(iii) of this title (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any person identified by the individual, and the individual's LAR or adult caregiver if applicable, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(23) Individual--A person seeking or receiving services under this subchapter.

(24) Inpatient mental health facility--A mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by HHSC;

(B) a private mental hospital licensed by HHSC;

(C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;

(D) an identifiable part of a general hospital in which diagnosis, treatment, and care for individuals with mental illness is provided and that is licensed by HHSC; or

(E) a hospital operated by a federal agency.

(25) Intake--The administrative process for gathering information about an individual and giving an individual information about an inpatient mental health facility and the facility's treatment and services, in accordance with Texas Health and Safety Code §572.0025(h)(3).

(26) Involuntarily-admitted individual--An individual receiving inpatient mental health facility services based on an admission made in accordance with:

(A) Texas Health and Safety Code Chapter 573 and described in §306.57(a) of this subchapter; or

(B) Texas Health and Safety Code §574.021 and described in §306.57(f) of this subchapter.

(27) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(28) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(29) Legal holiday--A holiday listed in the Texas Government Code §662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.

(30) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code §533A.035.

(31) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(32) LPHA--Licensed practitioner of the healing arts. A person who possesses any of the following state licenses is considered an LPHA and is automatically certified as a qualified mental health professional-community services (QMHP-CS):

- (A) a physician;
- (B) a physician assistant;
- (C) an APRN;
- (D) a licensed psychologist;
- (E) a licensed professional counselor;
- (F) a licensed clinical social worker; or
- (G) a licensed marriage and family therapist.

(33) LVN--Licensed vocational nurse. A person licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(34) Medical director--A physician who is board eligible or certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry and who provides clinical and policy oversight for the CSU.

(35) Medical record--A compilation of systematic and organized information relevant to the services provided to an individual.

(36) Medical services--Acts or services provided by a physician acting as described in Texas Occupations Code Chapter 151, or as delegated by a physician, in accordance with Texas Occupations Code Chapter 157.

(37) Mental illness--An illness, disease, or condition, other than a sole diagnosis of epilepsy, dementia, substance use disorder, ID, or DD that:

- (A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or
- (B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(38) Monitoring--One or more staff members observing an individual in person continuously or at pre-determined intervals; as ordered by a physician or physician-delegated physician's assistant (PA) or APRN; or by established protocol; and intervening when necessary to protect the individual from harming self or others.

(39) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(40) Nursing services--Acts or services provided by a registered nurse (RN) acting within the RN's scope of practice and assigned to an LVN, or delegated to an unlicensed person, in accordance with Texas Occupations Code Chapter 301.

(41) Nursing staff--A person required to be licensed in accordance with Texas Occupations Code Chapter 301 to engage in professional or vocational nursing or the person delegated to perform common nursing functions under the authority of an RN.

(42) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §547.0002 [~~§531.02251~~], which serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage and behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

(43) PA--Physician's assistant. A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code Chapter 204.

(44) PASRR--Preadmission screening and resident review.

(45) PASRR Level I screening--The process of screening an individual seeking admission to a nursing facility to identify whether the individual is suspected of having a mental illness, ID, or DD.

(46) PASRR Level II evaluation--A face-to-face evaluation:

(A) of an individual seeking admission to a nursing facility who is suspected of having a mental illness, ID, or DD; and

(B) performed by a LIDDA, LHMA, or LBHA to determine if the individual has a mental illness, ID, or DD and, if so, to:

- (i) assess the individual's need for care in a nursing facility;
- (ii) assess the individual's need for specialized services; and
- (iii) identify alternate placement options.

(47) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency, in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).

(48) Physician--A staff member:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(49) Pre-admission screening--The clinical process used by a QMHP-CS or LPHA to gather information from an individual, including a medical history, any history of substance use, trauma, and the problem for which the individual is seeking treatment to determine if a physician should conduct an admission examination.

(50) Preliminary examination--The psychiatric examination and assessment for medical stability performed and documented by a physician in accordance with Texas Health and Safety Code §573.022 to determine if emergency detention in an inpatient mental health facility is clinically justified for an individual for whom:

(A) an application for emergency detention is filed in accordance with Texas Health and Safety Code §573.011;

(B) a peace officer or emergency medical services personnel of an emergency medical services provider transporting the individual in accordance with a memorandum of understanding executed in accordance with Texas Health and Safety Code §573.005 files a notification of detention completed by the peace officer in accordance with Texas Health and Safety Code §573.002(a); or

(C) the LAR transporting their adult ward, without the assistance of a peace officer, in accordance with Texas Health and Safety Code §573.003, files an application for detention in accordance with Texas Health and Safety Code §573.004.

(51) Psychosocial rehabilitative services--Services that assist an individual in regaining and maintaining daily living skills required to function effectively in the community.

(52) QMHP-CS--Qualified mental health professional-community services. A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is an RN; or

(C) completes an alternative credentialing process as determined by an LMHA or LBHA in accordance with HHSC requirements.

(53) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(54) Recovery or treatment plan--A written plan:

(A) is developed in collaboration with the individual, and the individual's LAR or adult caregiver if applicable, and a QMHP-CS or LPHA;

(B) is amended at any time based on an individual's needs or requests;

(C) guides the recovery process and fostering resiliency;

(D) is completed in conjunction with the assessment tool adopted by HHSC;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) includes recommended services and supports or reasons for the exclusion of services and supports.

(55) Restraints--Any personal, mechanical, or chemical restraint defined in 25 TAC §415.253 (relating to Definitions).

(56) RN--Registered nurse. A staff member licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(57) Screening--Activities performed by a QMHP-CS to:

(A) collect triage information either in person, or through telephone or telehealth interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, and conducted before the in person or telehealth assessment to determine the need for emergency services; and

(C) determine the need for immediate assessment and mental health treatment recommendations.

(58) Seclusion--The involuntary separation of an individual from other individuals for any period of time and or the placement of the individual alone in an area from which the individual is prevented from leaving, as defined in 25 TAC §415.253(28).

(59) SED--Serious emotional disturbance. A diagnosed mental health disorder that substantially disrupts a child's or adolescent's ability to function socially, academically, and emotionally in accordance with Texas Government Code §547.0051 [Texas Government Code, §531.251].

(60) Serious physical injury--An injury determined by a physician, or physician-delegated PA or APRN, to require treatment by an appropriately licensed medical professional or licensed health-care professional, or in an emergency department or licensed hospital.

(61) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the individual's transfer from a facility or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(62) Staff member--Personnel including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(63) Staffing plan--A written plan that:

(A) demonstrates the number, qualifications, and responsibilities of staff members, including the administrator or designee, are appropriate for the size and scope of the services provided and that workloads are reasonable to meet the needs of individuals receiving services; and

(B) identifies staffing patterns, hours of coverage, and plans for providing back-up staff in emergencies.

(64) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* for substance use disorders.

(65) TAC--Texas Administrative Code.

(66) Telehealth service--A health-care service, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification or entitlement to an individual at a different physical location other than the health professional using telecommunications or information technology, in accordance with Texas Occupation Code §111.001(3).

(67) Telemedicine medical service--A health-care service delivered to an individual at a different physical location using telecommunications or information technology by:

(A) a physician licensed in Texas; or

(B) a health professional who acts under the delegation and supervision of a physician licensed in Texas and within the scope of the health professional's license in Texas.

(68) Transfer--The movement (including the discharge) of an individual outside a facility at the facility's direction, but it does not include such a movement of an individual who has been declared dead or leaves the facility without the facility's permission.

(69) Treating physician--A physician who coordinates and oversees an individual's treatment.

(70) Unit--A discrete and identifiable area of an inpatient mental health facility that includes individuals' rooms or other living areas and is separated from another similar area:

- (A) by a locked door;
- (B) by a floor; or
- (C) because the other similar area is in a different building.

(71) UP--Unlicensed person. A person, not licensed as a health care provider, who provides certain health related tasks and functions in a complementary or assistive role to the RN in providing direct care of an individual or carrying out common nursing functions as described in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and care in conformity with this chapter:

(A) who is monetarily compensated, including nurse aides, assistants, attendants, technicians, and other individuals providing care or assistance of health-related services; or

(B) who is a professional nursing student, not licensed as an RN or LVN, providing care for monetary compensation and not as part of their formal education.

(72) Voluntarily admitted individual--An individual receiving facility services based on an admission in accordance with:

(A) §306.55 of this subchapter (relating to Voluntary Admission Criteria and Intake Process); or

(B) §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission).

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 November 21, 2024.

TRD-202405685

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



SUBCHAPTER E. MENTAL HEALTH CASE MANAGEMENT

26 TAC §306.273

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Chapter 546 and 547.

The amendment affects Texas Government Code §531.0055 and Chapter 546 and 547.

§306.273. *MH Case Management Employee Competencies.*

(a) The provider must implement a process to ensure the competency of a case manager and a case manager supervisor that, at a minimum, ensures:

(1) an accurate knowledge of the requirements of this subchapter and the following subchapters of this title:

(A) Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards);

(B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(C) Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(D) Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(2) an accurate understanding of the nature of mental illness and serious emotional disturbance;

(3) an awareness and sensitivity in communicating and coordinating services with an individual who has a special physical need such as a hearing or visual impairment;

(4) the ability to respond to an individual's language and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups;

(5) the ability to complete the uniform assessment;

(6) the ability to understand and apply the utilization management guidelines;

(7) the ability to develop and implement a plan if the case manager is providing intensive case management services to a child or adolescent;

(8) the ability to identify an individual in crisis;

(9) knowledge of appropriate actions to take in managing a crisis;

(10) an understanding of the developmental needs of an adult, a child, or an adolescent;

(11) an understanding of the wraparound planning process or other department-approved model, if the case manager is providing intensive case management services to a child or adolescent;

(12) knowledge of health and human services available to a child or adolescent as described in Texas Government Code §546.0052 [Texas Government Code, §531.0244], if the case manager is providing intensive case management services to a child or adolescent;

(13) knowledge of available resources within the local community;

(14) knowledge of strategies for advocating effectively on behalf of individuals; and

(15) the ability to document the MH case management services described in §412.413 of this title (relating to Documenting MH Case Management Services).

(b) The provider shall require each case manager and case manager supervisor, prior to providing MH case management services, to:

(1) demonstrate the competencies described in subsection (a) of this section; and

(2) ensure that documentation verifying competencies is maintained in the personnel record of each case manager and case manager supervisor.

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 November 22, 2024.

TRD-202405758

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 330. LIDDA ROLE AND RESPONSIBILITIES

26 TAC §330.17

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §330.17, concerning LIDDA Administrative Functions.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from having a rule that accurately cites the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§330.17. *LIDDA Administrative Functions.*

(a) Local planning.

(1) A LIDDA must conduct local planning in accordance with THSC, §533.0352, and ensure involvement of the local advisory committee and other stakeholders.

(2) A LIDDA must participate in the local CRCG when an individual has complex needs and requires multiagency services.

(3) A LIDDA must coordinate with local agencies to build an integrated service delivery system that ensures broad access to and information about community services, identifies the LIDDA's safety net functions, and maximizes the utilization of existing resources while avoiding duplication of effort and gaps in services.

(b) Quality management. A LIDDA must develop a quality management program to monitor the performance of general revenue services providers and the LIDDA's compliance with the performance contract.

(c) Utilization management. A LIDDA must have:

(1) procedures describing how it authorizes general revenue services; and

(2) methods for evaluating the effectiveness of the authorization procedures.

(d) Information systems. A LIDDA must have information systems that:

(1) capture valid and reliable data; and

(2) accurately report required data to funding sources (for example, the Medicaid administration contractor, DADS, and other state and local agencies).

(e) Network management. A LIDDA must develop and manage a network of qualified providers that offer an array of general revenue services described in the performance contract.

(1) If the LIDDA is a provider of general revenue services, the LIDDA must have written procedures describing the qualifications and expectations of staff members.

(2) If a provider of general revenue services is a contractor of the LIDDA, the LIDDA must:

(A) ensure that the contract is procured and complies with the requirements of Subchapter B of this chapter (relating to Contracts Management for Local Authorities);

(B) have a process for resolving complaints from contract providers; and

(C) provide appropriate technical assistance and training to ensure that contract providers understand their contractual obligations (for example, documentation and billing).

(f) Consideration of public input, ultimate cost-benefit, and client care issues. In accordance with THSC §533.035(c), a LIDDA must consider public input, ultimate cost-benefit, and client care issues to ensure individual choice and the best use of public money in:

(1) assembling a network of general revenue services providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in the need of services and supports; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(g) Interest list management.

(1) A LIDDA must contact individuals on the HCS Program interest list and the TxHmL Program interest list as required by and in accordance with the performance contract.

(2) A LIDDA must have policies and procedures for:

(A) registering individuals on the LIDDA's interest list for general revenue services that complies with the requirements set forth in the Texas Government Code §526.0602 [Texas Government Code, §531.0931], related to military members and their dependents; and

(B) periodically contacting the individuals on the interest list.

(h) Qualifications and availability of staff members.

(1) Criminal history and registry clearances. A LIDDA must conduct criminal history and registry clearances for job and volunteer applicants in accordance with Chapter 4, Subchapter K, of this title (relating to Criminal History and Registry Clearances).

(2) Availability of staff members. A LIDDA must ensure the continuous availability of trained and qualified staff members to ensure the provision of service coordination and general revenue services.

(3) Qualifications of a staff member who is a service coordinator. A LIDDA must ensure that a staff member who is a service coordinator meets the qualifications set forth in §2.559 of this chapter (relating to Minimum Qualifications) contained in Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability).

(4) Qualifications of a staff member other than a service coordinator.

(A) A LIDDA must ensure that a staff member who is not a service coordinator and who directly provides general revenue services is at least 18 years of age and:

(i) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) written competency-based assessment of the ability to document service delivery and observations of an individual; and

(II) at least three personal references from persons not related by blood or marriage that indicate the ability to provide a safe, healthy environment for an individual.

(B) A LIDDA must:

(i) document the required education and work experience for a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member by position classification, by position category, or by individual position; and

(ii) ensure that a supervisor of a staff member who is not a service coordinator and who directly provides general revenue services has a minimum of one year experience working directly with people with intellectual disability or other developmental disabilities (for example, work experience, volunteer experience, or personal experience as a family member).

(C) A LIDDA must ensure that a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member have required state certification or licensure.

(5) Required competencies and skills relating to health, safety, and support needs of individuals.

(A) A LIDDA must identify in writing the required competencies and skills for a staff member by position classification, position category, or individual position that meet the health, safety, and support needs of individuals and include:

(i) time frames and frequency for the staff member to demonstrate competency; and

(ii) a method for measuring the competency and skills of the staff member.

(B) A LIDDA must maintain documentation that a staff member has demonstrated competencies and skills required by subparagraph (A) of this paragraph.

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 November 21, 2024.

TRD-202405686

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 351. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

26 TAC §351.2

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.2, concerning Definitions.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§351.2. Definitions.

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

(1) Act--The Children with Special Health Care Needs Services Act, Health and Safety Code, Chapter 35.

(2) Advanced practice registered nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(3) Applicant--A person making an initial application or re-application for CSHCN Services Program services.

(4) Case management services--Case management services include, but are not limited to:

(A) planning, accessing, and coordinating needed health care and related services for children with special health care needs and their families. Case management services are performed in partnership with the child, the child's family, providers, and others involved in the care of the child and are performed as needed to help improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(5) Child with special health care needs--A person who:

(A) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(B) has cystic fibrosis, regardless of the person's age; and

(C) may have a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has behavioral or emotional condition without having an accompanying physical or developmental condition.

(6) CHIP--The Children's Health Insurance Program administered by the Texas Health and Human Services Commission under Title XXI of the Social Security Act.

(7) Chronic developmental condition--A disability manifested during the developmental period for a child with special health care needs which results in impaired intellectual functioning or deficiencies in essential skills, which is expected to continue for a period longer than one year, and which causes a person to need assistance in the major activities of daily living or in meeting personal care needs. For the purpose of this chapter, a chronic developmental condition must include physical manifestations and may not be solely a delay in intellectual, mental, behavioral, or emotional development.

(8) Chronic physical condition--A disease or disabling condition of the body, of a bodily tissue, or of an organ which will last or is expected to last for at least 12 months, that results, or without treatment, may result in limits to one or more major life activities, and that requires health and related services of a type or amount beyond those required by children generally. Such a condition may exist with accompanying developmental, mental, behavioral, or emotional conditions, but is not solely a delay in intellectual development or solely a mental, behavioral, or emotional condition.

(9) Claim form--The document approved by the CSHCN Services Program for submitting a claim for processing and payment.

(10) Client--A person who has applied for program services and who meets all CSHCN Services Program eligibility requirements and is determined to be eligible for program services.

(A) New client:

(i) a person who has applied to the program for the first time and who is determined to be eligible for program services; or

(ii) a person who has re-applied to the program (after a lapse in eligibility) and who is determined to be eligible for program services.

(B) Ongoing client--A client who currently is not on the program's waiting list.

(C) Waiting list client--A client who currently is on the program's waiting list.

(11) CMS--The Centers for Medicare and Medicaid Services.

(12) Commission--The Texas Health and Human Services Commission.

(13) Commissioner--The Commissioner of the Department of State Health Services.

(14) Co-insurance--A cost-sharing arrangement in which a covered person pays a specified percentage of the charge for a covered service. The covered person may be responsible for payment at the time the health care service is provided.

(15) Co-pay and co-payment--A cost-sharing arrangement in which a client pays a specified charge for a specified service. The client is usually responsible for payment at the time the health care service is provided.

(16) CSHCN Services Program--The services program for children with special health care needs described in §38.1 of this title (relating to Purpose and Common Name).

(17) Date of service (DOS)--The date a service is provided.

(18) Deductible--A cost-sharing arrangement in which a client is responsible for paying a specific amount annually for covered

services before an insurance carrier or plan begins to pay for covered services.

(19) Dentist--An individual licensed by the State Board of Dental Examiners to practice dentistry in the State of Texas.

(20) Department--The Department of State Health Services.

(21) Diagnosis and evaluation services--The process of performing specialized examinations, tests, or procedures to determine whether a CSHCN Services Program applicant for health care benefits has a chronic physical or developmental condition as determined by a physician or dentist participating in the CSHCN Services Program or to help determine whether a waiting list client has an "urgent need for health care benefits" according to the criteria and protocol described in §38.16(e) of this title (relating to Procedures to Address Program Budget Alignment).

(22) Disregards--An amount of money deducted from the family's total income for allowable expenses, such as child care.

(23) Eligibility date for the CSHCN Services Program health care benefits--The effective date of eligibility for the CSHCN Services Program health care benefits is the date of receipt of a complete, approved application except in the following circumstances.

(A) The effective date of eligibility for newborns who are not born prematurely will be the date of birth. Newborn means a child 28 days old or younger.

(B) The effective date of eligibility for an applicant who is born prematurely shall be the day after the applicant has been out of the hospital for 14 consecutive days, but no earlier than the date of receipt of the application.

(C) The effective date of eligibility following traumatic injury shall be the day after the acute phase of treatment ends, but no earlier than the date of receipt of the application.

(D) The effective date of eligibility for applicants with spenddown is the date of receipt of the medical bills which document that spenddown has been met, following the receipt of a complete application. Only medical bills having a DOS within 12 months prior to or 6 months after the date of receipt of the application may be included to satisfy spenddown requirements. Medical bills for any member of the family for which the applicant, parent(s), guardian or managing conservator of the CSHCN Services Program applicant is responsible may be included. Medical bills used to meet spenddown cannot be paid by the CSHCN Services Program.

(E) Excluding applications for clients who are known to be ineligible for Medicaid and the CHIP due to age, citizenship status, or insurance coverage, all applications must include a determination of eligibility from Medicaid and the CHIP. If the CSHCN Services Program application is received without a Medicaid determination, a CHIP determination, or other data or documents needed to process the application, it will be considered incomplete. The applicant will be notified that the application is incomplete and given 60 days to submit the Medicaid determination, CHIP denial or enrollment, or other missing data or documents to the CSHCN Services Program. If the application is made complete within the 60-day time limit, the client's eligibility effective date will be established as the date the CSHCN Services Program application was first received. If the application is made complete more than 60 days after initial receipt, the eligibility effective date will be established as the date the application was made complete.

(24) Emergency--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine

could reasonably expect that the absence of immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(25) Emotional or behavioral condition--Behavior which varies significantly from normal, that is chronic and does not quickly disappear, and that is unacceptable because of social or cultural expectations. Emotional or behavioral responses which are so different from those of the generally accepted, age-appropriate norms of people with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress, or classroom behavior. Examples include but are not limited to the following:

(A) an inability to build or maintain satisfactory age-appropriate interpersonal relationships with peers or adults;

(B) dangerously aggressive, self-destructive, severely withdrawn, or noncommunicative behaviors;

(C) a pervasive mood of unhappiness or depression; or

(D) evidence of excessive anxiety or fears.

(26) Facility--A hospital, psychiatric hospital, rehabilitation hospital or center, ambulatory surgical center, renal dialysis center, specialty center, or outpatient clinic.

(27) Family--For the purpose of determining family size for program eligibility, the family includes the following persons who live in the same residence:

(A) the applicant;

(B) those related to the applicant as a parent, stepparent, or spouse who have a legal responsibility to support the applicant, or guardians or managing conservators who have a duty to provide food, shelter, education, and medical care for the applicant;

(C) children under age 19 or wards of the applicant; and

(D) children under age 19 or wards of a parent, stepparent, or spouse.

(28) Family support services--Disability-related support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*), as amended, and permanency planning, as that term is defined by Texas Government Code §546.0201 [~~Government Code, §531.151~~].

(29) Federal Poverty Level (FPL)--The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor agency or agencies. The FPL varies according to family size and after adjustment for inflation, is published annually in the *Federal Register*.

(30) Federally qualified health center--A federally qualified health center is designated by CMS to provide core medical services to a Medically Underserved Population.

(31) Financial independence--A state in which a person currently files his or her own personal U.S. income tax return and is not claimed as a dependent by any other person on his or her U.S. income tax return.

(32) Guardian--A statutory officer appointed under the Texas Probate Code who has a duty to provide food, shelter, education, and medical care for his or her ward.

(33) Health care benefits--CSHCN Services Program benefits consisting of diagnosis and evaluation services, rehabilitation services, medical home care management services, family support services, transportation related services, and insurance premium payment services.

(34) Health insurance and health benefits plan--A policy or plan, individual, group, or government-sponsored, that an individual purchases or in which an individual participates that provides benefits when medical or dental costs are or would be incurred. Sources of health insurance include, but are not limited to, health insurance policies, buy-in programs, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, United States Department of Defense or Department of Veterans Affairs benefit plans, Medicaid, CHIP, and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based upon cost, cash payment based upon a schedule, or access without charge or at minimal charge to providers of medical or dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a publicly supported medical school shall not constitute health insurance for purposes of this chapter.

(35) Income--The gross income, either earned or unearned, before deductions over a given period of time for each family member.

(36) Managing conservator--A person designated by a court to have daily legal responsibility for a child.

(37) Medicaid--A program of medical care authorized by Title XIX of the Social Security Act and the Human Resources Code.

(38) Medical home--A respectful partnership between a client, the client's family as appropriate, and the client's primary health care setting. A medical home is family centered health care that is accessible, continuous, comprehensive, coordinated, compassionate, and culturally competent. A medical home provides primary care that includes preventive care, care coordination, and appropriate referral and collaboration with specialist and other service providers as required.

(39) Medicare--A federal program that provides medical care for people age 65 or older and the disabled as authorized by Title XVIII of the Social Security Act.

(40) Natural home--The home in which a person lives that is either the residence of his or her parent(s), foster parent(s) or guardian, or extended family member(s), or the home in the community where the person has chosen to live, alone or with other persons. A natural home may utilize natural support systems such as family, friends, co-workers, and services available to the general population as they are available.

(41) Other benefit--A benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services included in the scope of coverage of the CSHCN Services Program including, but not limited to, benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) home, auto, or other liability insurance;

(C) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. §§1395 *et seq.*, 1396 *et seq.*, and 1397aa *et seq.*), as amended;

(D) the United States Department of Veterans Affairs;

(E) the United States Department of Defense;

(F) workers' compensation or any other compulsory employers' insurance program;

(G) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, a county indigent health care program, or the facilities of a publicly supported medical school; or

(H) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this chapter.

(42) Otologist--A physician whose specialty is diseases of the ear.

(43) Permanency planning--A planning process undertaken for children with chronic illness or developmental disabilities who reside in institutions or are at risk of institutional placement, with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development, which is based on the philosophy that all children belong in families and need permanent family relationships. Permanency planning is directed toward securing: a consistent, nurturing environment, an enduring, positive adult relationship(s), and a specific person who will be an advocate for the child throughout the child's life. Permanency planning provides supports to enable families to nurture their children, to reunite with their children when they have been placed outside the home, and to place their children in family environments.

(44) Person--An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(45) Physician--A person licensed by the Texas Medical Board to practice medicine in this state.

(46) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(47) Practitioner--A person who is licensed to practice medicine, dentistry, nursing or an allied health profession.

(48) Prematurity or born prematurely--A child born at less than 36 weeks gestational age and hospitalized since birth.

(49) Program--The Children with Special Health Care Needs (CSHCN) Services Program.

(50) Provider--A person or facility as defined in §38.6 of this title (relating to Providers) that delivers services purchased by the CSHCN Services Program for the purpose of implementing the Act.

(51) Rehabilitation services--The process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic or rehabilitative services:

(A) facility care, medical and dental care, and occupational, speech, and physical therapies;

(B) the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, and other medical supplies; and

(C) other services specified in this chapter.

(52) Respite care--A service provided on a short-term basis for the purpose of relief to the primary care giver in providing care to individuals with disabilities. Respite services can be provided in either in-home or out-of-home settings on a planned basis or in response to a crisis in the family where a temporary caregiver is needed.

(53) Rural health clinic--A rural health clinic is designated by CMS to provide core medical services in a Medically Underserved Area.

(54) Routine child care--Child care for a child who needs supervision while the parent or guardian is at work, in school, or in job training.

(55) Services--The care, activities, and supplies provided under the Act, including but not limited to, both acute and chronic or rehabilitative medical care, dental care, facility care, medications, durable medical equipment, medical supplies, occupational, physical, and speech therapies, family support services, case management services, and other care specified by program rules.

(56) Social service organization--For purposes of this chapter, a for-profit or nonprofit corporation or other entity, not including individual persons, that provides funds for travel, meal, lodging, and family supports expenses in advance to enable CSHCN Services Program clients to obtain program services.

(57) Specialty center--A facility and staff that meet the CSHCN Services Program minimum standards established in this chapter and are designated for use by CSHCN Services Program clients as part of the comprehensive services for a specific medical condition.

(58) Spenddown--A process that allows an applicant to obtain program financial eligibility when the applicant's family income exceeds 200% of the FPL. The family must prove cumulative medical expenses that exceed the difference between the family income and 200% of the FPL income limit.

(59) State--The State of Texas.

(60) Subrogation--Assumption by third party, such as a second creditor or an insurance company, of another person's legal right to collect a debt or damages.

(61) Supplemental Security Income Program (SSI)--Title XVI of the Social Security Act which provides for payments to individuals (including children under age 18) who are disabled and have limited income and resources.

(62) Support--The contribution of money or services necessary for a person's maintenance, including, but not limited to, food, clothing, shelter, transportation, and health care.

(63) Texas resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, guardian of the child's person, or caretaker (with whom the child consistently resides and plans to continue to reside) is a Texas resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a Texas resident; or

(iii) is an adult residing in Texas, including an adult whose parent(s), managing conservator, guardian of the adult's person, or caretaker (with whom the adult resides and plans to continue to reside).

(64) Treatment plan--The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a physician or other practitioner in the program.

(65) United States Public Health Service price--The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (P.L. 102-585, November 4, 1992).

(66) Urgent need for health care benefits--A need for health care services when the lack of those services would cause a permanent increase in disability, intense pain or suffering, or death.

(67) Ward--An individual placed under the protection of a guardian, or a person who by reason of incapacity is under the protection of a court either directly or through a guardian appointed by the court.

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 November 21, 2024.

TRD-202405687

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-2921



CHAPTER 358. CHILDREN'S AUTISM PROGRAM

SUBCHAPTER A. GENERAL RULES

26 TAC §358.103

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §358.103, concerning Legal Authority.

BACKGROUND AND PURPOSE

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

tive on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 524.

The amendment affects Texas Government Code §531.0055 and Chapter 524.

§358.103. *Legal Authority.*

The following statutes authorize the funding and rules for this program:

- (1) Texas Human Resources Code, §111.051;
- (2) Texas Human Resources Code, Chapter 117; and
- (3) Texas Government Code, §524.0005[§531.0055].

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 November 21, 2024.

TRD-202405688

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

26 TAC §554.2302

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §554.2302, concerning Requirements for a Contracted Medicaid Facility.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 545.

The amendment affects Texas Government Code §531.0055 and Chapter 545.

§554.2302. Requirements for a Contracted Medicaid Facility.

(a) This section applies to nursing facilities (NFs) that have been licensed and certified as eligible for participation under Title XIX.

(b) Each nursing facility (NF) must comply with the state requirements for participation and the facility's contract on a continuing basis.

(c) Each NF must comply with the Texas Health and Human Services Commission's (HHSC's) utilization review requirements as provided in 1 TAC §371.212 (relating to Minimum Data Set Assessments) and §371.214 (relating to Resource Utilization Group Classification System).

(d) A facility may not participate in the Texas Medical Assistance Program if it has restrictive policies or practices, including:

- (1) requiring the resident to make a will, with the facility named as legatee or devisee;
- (2) requiring the resident to assign his life insurance to the facility;

(3) requiring the resident to transfer property to the facility;

(4) requiring the resident to pay a lump sum entrance fee or make any other payment or concession to the facility beyond the recognized rate for board, room, and care as a condition for entry, departure, or continued stay;

(5) controlling or restricting the resident, the resident's guardian, or responsible party in the use of the resident's personal needs allowance;

(6) restricting the resident from leaving the facility at will except as provided by state law;

(7) restricting the resident from applying for Medicaid for a specified period of time;

(8) denying appropriate care to an individual on the basis of his race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(9) preventing terminally ill adult residents from exercising their will in making written or unwritten directives to reject life-sustaining procedures.

(e) If DADS has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX resident, any member of his family, or any other source for supplementation or for any item except as allowed within DADS policies and regulations.

(f) If DADS suspends a facility's vendor payments or proposes to terminate a facility's contract, the facility may request an administrative hearing to challenge the action. If a facility requests a hearing, the facility must make the request in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I.

(g) DADS' interpretations of the requirements for participation or the contract may not be appealed to HHSC's hearings department unless the interpretation has caused an adverse action for the facility.

(h) Facilities must allow representatives of DADS, the Medicaid Fraud Control Unit, and the Department of Health and Human Services to enter the premises at any time to make inspections or to privately interview the residents receiving assistance from DADS.

(i) Facilities must supply DADS complete information according to federal and state requirements about the identity of:

(1) each person who directly or indirectly owns interest of 5% or more in the facility;

(2) each owner (in whole or in part) of any property, assets, mortgage, deed of trust, note, or other obligation secured by the facility;

(3) each officer and director, if the facility is organized as a corporation;

(4) each partner, if the facility is organized as a partnership (A copy of the partnership agreement is required, but the dollar amount of capital contributions of the partners may be omitted); and

(5) any director, officer, agency, or managing employee of the institution, agency, or organization, who has ever been convicted of a criminal offense related to the person's involvement in programs established by Title XVIII, XIX, and XX (Effective dates for disclosure of any convictions are July 1, 1966, for Medicare, and January 1, 1969, for Medicaid.)

(j) If a profit-making corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between DADS and the corporation; and

(4) any management contract for the facility. If no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, the president and secretary of the corporation should state this on the department form.

(k) If a nonprofit corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts with DADS; and

(4) a copy of any management contract for the facility.

(l) Facilities other than those described in subsections (j) and (k) of this section must furnish a copy of:

(1) charter or other legal basis for the organization which owns the facility;

(2) any management contract or agreement for the facility;

(3) by-laws of the organization (if applicable); and

(4) other information required by DADS to determine the status of the legal entity that owns the facility.

(m) Facilities must disclose business transaction information. A facility must send to DADS, within 35 days after the date of a written request, complete information on:

(1) the ownership of a subcontractor with whom the facility has had, during the previous 12 months, business transactions totaling more than \$25,000; and

(2) any business transactions between the facility and any wholly owned supplier, or between the facility and any subcontractor during the five-year period ending on the date of the request.

(n) The facility must report changes in the required information promptly to DADS.

(o) Failure to provide this information may result in suspension, termination, or other contract action, including holding vendor funds. Payment to the facility is denied beginning on the day after the date information was due, and ending on the day before the date the information is received by DADS.

(p) Each facility must comply with Texas Government Code §545.0201 [~~Government Code, §531.116~~]. A facility that furnishes services under the Medicaid program is subject to Occupations Code, Chapter 102. The facility's compliance with that chapter is a condition of the facility's eligibility to participate as a facility under those 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.

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

TRD-202405689

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 560. DENIAL OR REFUSAL OF LICENSE

26 TAC §560.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §560.3, concerning Adverse Licensing Record.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates references to existing laws.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§560.3. Adverse Licensing Record.

HHSC may deny an application for a license or refuse to renew a license for a facility described in §560.1(2)(A) - (E) of this chapter (relating to Definitions) if:

(1) any of the following persons are listed in a record maintained by a health and human services agency under Texas Government Code §526.0454 [§531.952]:

- (A) the applicant or facility license holder;
- (B) a person listed on an initial or renewal application;

or

(C) a controlling person of the applicant or facility license holder; and

(2) the health and human services agency's action that resulted in the person being listed in a record maintained under Texas Government Code §526.0454 [§531.952] is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the person;

(B) a threat to the health, safety, or well-being of an individual in the care of the person;

(C) the physical, mental, or financial exploitation of an individual in the care of the person; or

(D) a determination by the health and human services agency that the person has committed an act or omission that renders the person unqualified or unfit to fulfill the obligations of the license, listing, or registration.

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 November 21, 2024.

TRD-202405690

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 566. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

26 TAC §566.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §566.3, concerning Definitions.

BACKGROUND AND PURPOSE

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

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 543A.

The amendment affects Texas Government Code §531.0055 and Chapter 543A.

§566.3. Definitions.

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

- (1) Abuse--
 - (A) physical abuse;
 - (B) sexual abuse; or
 - (C) verbal or emotional abuse.
- (2) Actual harm--A negative outcome that compromises an individual's physical, mental, or emotional well-being but does not constitute immediate threat.
- (3) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- (4) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.
- (5) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.
- (6) Applicant--A Texas resident seeking services in the TxHmL Program.
- (7) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (8) Calendar day--Any day, including weekends and holidays.
- (9) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).
- (10) CFC--Community First Choice.
- (11) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services

and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(12) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(13) CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(14) CFC PAS/HAB--CFC personal assistance services/habilitation. A service that:

- (A) consists of:
 - (i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:
 - (I) non-skilled assistance with the performance of the ADLs and IADLs;
 - (II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;
 - (III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and
 - (IV) assistance with health-related tasks; and
 - (ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:
 - (I) self-care;
 - (II) personal hygiene;
 - (III) household tasks;
 - (IV) mobility;
 - (V) money management;
 - (VI) community integration, including how to get around in the community;
 - (VII) use of adaptive equipment;
 - (VIII) personal decision making;
 - (IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and
 - (X) self-administration of medication; and
 - (B) does not include transporting the individual, which means driving the individual from one location to another.
- (15) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.
- (16) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the HCS Handbook.
- (17) Chemical restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(18) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(19) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(20) Contract--A provisional contract or a standard contract.

(21) Controlling person--A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(22) Critical incident--An event listed in the TxHmL Provider User Guide found at www.hhsc.state.tx.us.

(23) Critical violation--A violation for which HHSC may assess an administrative penalty before giving a program provider an opportunity to correct the violation and that:

(A) is an immediate threat;

(B) has resulted in actual harm and is widespread;

(C) has resulted in actual harm and is a pattern; or

(D) has the potential to result in actual harm and is widespread.

(24) DADS--HHSC.

(25) Department of Assistive and Rehabilitative Services--The Texas Workforce Commission.

(26) DFPS--The Department of Family and Protective Services.

(27) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(28) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(29) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(30) Follow-up survey--A review by HHSC of a program provider to determine if the program provider has completed corrective action.

(31) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(32) Good cause--As used in §9.578 of this subchapter, (relating to Program Provider Certification Principles: Service Delivery), a reason outside the control of the CFC ERS provider, as determined by HHSC.

(33) HCS Program--The Home and Community-based Services Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(34) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(35) HHSC--The Texas Health and Human Services Commission.

(36) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(37) ICAP--Inventory for Client and Agency Planning.

(38) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(39) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(40) ID/RC Assessment--A form used by HHSC for LOC determination and LON assignment.

(41) Immediate threat--A situation that caused, or is likely to cause, serious physical harm or serious emotional harm to an individual, or the death of an individual.

(42) Implementation plan--A written document developed by a program provider for an individual that, for each TxHmL Program service, except for transportation provided as a community support activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented;

and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(43) Individual--A person enrolled in the TxHmL Program.

(44) Initial certification survey--A review by HHSC of a program provider with a provisional contract to determine if the program provider is in compliance with the certification principles.

(45) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(46) Intermittent survey--A review by HHSC of a program provider that is not an initial certification survey, a recertification survey, or a follow-up survey, to determine if the program provider is in compliance with the certification principles.

(47) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(48) IPC cost--Estimated annual cost of program services included on an IPC.

(49) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(50) Isolated--The scope of a violation that has affected a very limited number of individuals or that has occurred only occasionally.

(51) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(52) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(53) LOC--Level of care. A determination made by HHSC about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(54) LON--Level of need. An assignment given by HHSC for an applicant or individual that is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the ID/RC Assessment.

(55) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(56) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001 [Texas Government Code, §536.001].

(57) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(58) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body.

(59) Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services or CFC services; and

(B) that has a service capacity designated in the HHSC data system of no more than three individuals.

(60) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(61) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(62) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(63) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(64) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(65) Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Texas Workforce Commission;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(66) Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with certification principles, and the failures:

(A) are found throughout the services provided by the program provider; or

(B) involve or affect the same individuals, service providers, or volunteers.

(67) PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC Person-Directed Plan form and discovery tool found on the HHSC website, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety.

(68) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(69) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(70) Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(71) Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action that a pro-

gram provider will take for each violation identified on a final survey report.

(72) Plan of removal--A written plan that describes the action a program provider will take to remove an immediate threat that HHSC identifies.

(73) Post 45-day follow-up survey--A follow-up survey conducted at least 46 calendar days after the exit conference of the survey in which the violation requiring corrective action was identified.

(74) Post-move monitoring visit--As described in 26 TAC §303.702 (relating to Post-transition Responsibilities), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(75) Pre-move site review--As described in 26 TAC §303.701 (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(76) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with HHSC to provide TxHmL Program services, excluding an FMSA.

(77) Provisional contract--A contract that HHSC enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e) of this title (relating to Standard Contract).

(78) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(79) Recertification survey--A review by HHSC of a program provider with a standard contract to determine if the program provider is in compliance with the certification principles and will be certified for a new certification period.

(80) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

- (B) is manifested before the individual reaches age 22;
- (C) is likely to continue indefinitely; and
- (D) results in substantial functional limitation in at least three of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

(81) Repeated violation--A violation that is:

- (A) based on the same certification principle; and
- (B) involves the same TxHmL Program service.

(82) Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(83) Responder--A person designated to respond to an alarm call activated by an individual.

(84) Restraint--Any of the following:

- (A) a physical restraint;
- (B) a mechanical restraint; or
- (C) a chemical restraint.

(85) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(86) Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(87) Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(88) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(89) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(90) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

- (i) an applicant or individual and LAR;
- (ii) service coordinator; and
- (iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

- (i) the applicant and LAR;
- (ii) service coordinator;
- (iii) a staff member of the program provider;
- (iv) providers of specialized services;
- (v) a nursing facility staff person who is familiar with the applicant's needs;
- (vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and
- (vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

- (i) the individual and LAR;
- (ii) service coordinator;
- (iii) a staff member of the program provider;
- (iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and
- (v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(91) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(92) Sexual abuse--Any of the following:

- (A) sexual exploitation of an individual;
- (B) non-consensual or unwelcomed sexual activity with an individual; or
- (C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(93) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(94) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

- (A) which may include sexual contact; and
- (B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(95) Specialized services--The services defined in 26 TAC §303.102 (relating to Definitions).

(96) Staff member--An employee or contractor of a TxHmL Program provider.

(97) Standard contract--A contract that HHSC enters into with a program provider in accordance with §49.209 of this title that has a term of no more than five years, not including any extension agreed to in accordance §49.209(d) of this title.

(98) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(99) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(100) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(101) Survey--An initial certification survey, a recertification survey, a follow-up survey, and an intermittent survey.

(102) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(103) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(104) Transition plan--As described in 26 TAC §303.102, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(105) Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using HHSC Individual Transportation Plan form found on the HHSC website. A transportation plan is used to document how transportation as a community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(106) TxHmL Program--The Texas Home Living Program, operated by HHSC and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(107) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(108) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(109) Violation--A finding by HHSC that a program provider is not or has not been in compliance with a certification principle.

(110) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

(111) Widespread--The scope of a violation that:

(A) is pervasive throughout the services provided by the program provider; or

(B) represents a systemic failure by the program provider that affects or has the potential to affect a large portion of or all individuals.

(112) Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede, including any extension agreed to in accordance §49.209(d) of this title.

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

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

TRD-202405691

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

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



CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §711.1, concerning What is the purpose of this chapter; §711.3, concerning How are the terms in this chapter defined; §711.1402, concerning How are the terms in this subchapter defined; and §711.1406, concerning How is the term agency defined for the purpose of this subchapter.

BACKGROUND AND PURPOSE

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

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 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 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 because the amendments only update references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

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

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 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 24R085" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §711.1, §711.3

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 Chapters 542 and 546.

The amendments affect Texas Government Code §531.0055 and Chapters 542 and 546.

§711.1. *What is the purpose of this chapter?*

The purpose of this chapter is to:

(1) implement Human Resources Code (HRC), Chapter 48, Subchapter F, and Texas Family Code §261.404.

(2) describe:

(A) Adult Protective Services (APS) investigations of allegations of abuse, neglect, and exploitation involving:

(i) adults or children receiving services from a provider, as that term is defined in HRC §48.251(9), if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider;

(ii) adults or children who live in a residence that is owned, operated, or controlled by a provider in the home and community-based services (HCS) waiver program described by Texas Government Code §542.0001 [~~§534.001(11)(B)~~, ~~Government Code~~], regardless of whether the individual is receiving services under the home and community-based services (HCS) waiver program; and

(iii) children receiving services from a home and community support services agency licensed under Chapter 142, Health and Safety Code, if the person alleged or suspected to have committed the abuse, neglect, or exploitation is an officer, employee, agent, contractor, or subcontractor of the home and community support services agency; and

(B) that APS does not investigate allegations if the provider alleged or suspected to have committed the abuse, neglect, or exploitation is operated, licensed, or certified, or registered by a state agency that has the authority to investigate a report of abuse, neglect, or exploitation of an individual by the provider;

(3) define abuse, neglect, and exploitation for investigations conducted under Human Resources Code, Chapter 48, Subchapter F and Texas Family Code §261.404;

(4) describe procedures for reporting and investigating allegations; and

(5) implement Human Resources Code, Chapter 48, Subchapter I, relating to the Employee Misconduct Registry maintained by

DADS, as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).

§711.3. How are the terms in this chapter defined?

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

- (1) Adult--An adult is a person:
 - (A) 18 years of age or older; or
 - (B) under 18 years of age who:
 - (i) is or has been married; or
 - (ii) has had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.
- (2) APS--Adult Protective Services.
- (3) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of a service provider.
- (4) Allegation--A report by an individual that an individual receiving services has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.
- (5) Allegation type--The type of allegation investigated under this chapter. APS investigates the following allegation types:
 - (A) physical abuse;
 - (B) sexual abuse;
 - (C) verbal/emotional abuse;
 - (D) neglect; and
 - (E) exploitation.
- (6) Alleged perpetrator-- A direct provider alleged to have committed an act of abuse, neglect, or exploitation.
- (7) Child--A person under 18 years of age who:
 - (A) is not and has not been married; or
 - (B) has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.
- (8) Clinical practice--Relates to the demonstration of professional competence of a licensed professional as described by the appropriate licensing professional board.
- (9) Community center--A community mental health center; community center for individuals with intellectual or developmental disabilities; or community mental health center and community center for individuals with intellectual or developmental disabilities, established under the Health and Safety Code, Title 7, Chapter 534, Subchapter A.
- (10) Consumer Directed Services (CDS) employer--A consumer directed services client or their legally authorized representative.
- (11) DADS--Department of Aging and Disability Services.
- (12) DFPS--Department of Family and Protective Services.
- (13) DSHS--Department of State Health Services.
- (14) Designated Perpetrator--A direct provider who has committed an act of abuse, neglect, or exploitation.
- (15) Direct Provider--A person, employee, agent, contractor, or subcontractor of a service provider responsible for providing services to an individual receiving services.
 - (16) Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.
 - (17) Facility--
 - (A) DADS and DSHS central offices, state supported living centers, state hospitals, the Rio Grande State Center, the Waco Center for Youth, the El Paso Psychiatric Center, and community services operated by DADS or DSHS;
 - (B) A person contracting with a health and human services agency to provide inpatient mental health services; and
 - (C) Intermediate care facilities for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code.
 - (18) HHSC--Health and Human Services Commission.
 - (19) Home and community-based services--Have the meaning given to them in Human Resources Code §48.251(a)(5) as services provided in the home or community in accordance with 42 U.S.C. §1315, 42 U.S.C. §1315a, 42 U.S.C. §1396a, or 42 U.S.C. §1396n.
 - (20) Home and community-based services (HCS) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by Texas Government Code §542.0001 [~~§534.001(11)(B)~~, Government Code].
 - (21) Home and community support services agency (HCSSA)--An agency licensed under Chapter 142, Health and Safety Code.
 - (22) ICF-IID--A licensed intermediate care facility for individuals with an intellectual disability or related conditions as described in Chapter 252, Health and Safety Code.
 - (23) Incitement--To spur to action or instigate into activity; the term implies responsibility for initiating another's actions.
 - (24) Individual receiving services--
 - (A) An adult or child who receives services from a provider as that term is defined in §48.251(a)(9), Human Resources Code.
 - (B) An adult or child who lives in a residence that is owned, operated, or controlled by an HCS waiver program provider regardless of whether the individual is receiving HCS waiver program services; or
 - (C) A child receiving services from a HCSSA.
 - (25) Investigator--An employee of Adult Protective Services who has:
 - (A) demonstrated competence and expertise in conducting investigations; and
 - (B) received training on techniques for communicating effectively with individuals with a disability.
 - (26) Limited Service Provider--An entity that contracts with a service provider to provide services.
 - (27) Local authority-- Either:
 - (A) a local mental health authority designated by the HHSC executive commissioner in accordance with §533.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code; or

(B) a local intellectual and developmental disability authority designated by the HHSC executive commissioner in accordance with §533A.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code.

(28) Non-serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice registered nurse (APRN), or physician.

(B) For all other service providers any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include:

- (i) superficial laceration;
- (ii) contusion two and one-half inches in diameter or smaller; or
- (iii) abrasion.

(29) Perpetrator--A direct provider who has committed or alleged to have committed an act of abuse, neglect, or exploitation.

(30) Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(31) Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(32) Provider--A provider is:

- (A) a facility;
- (B) a community center, local mental health authority, and local intellectual and developmental disability authority;
- (C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;
- (D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;
- (E) a managed care organization;
- (F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A)-(E) of this paragraph; and
- (G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Texas Government Code §546.0101 [~~§531.051~~, Government Code].

(33) Reporter--The person, who may be anonymous, making an allegation.

(34) Serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or APRN. Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or APRN. For the purposes of this subchapter, medical intervention does not include first aid, an exami-

nation, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication;

(B) For all other service providers, any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include:

- (i) fracture;
- (ii) dislocation of any joint;
- (iii) internal injury;
- (iv) contusion larger than two and one-half inches in diameter;
- (v) concussion;
- (vi) second or third degree burn; or
- (vii) any laceration requiring sutures or wound closure.

(35) Service Provider--A provider, HCSSA, or HCS waiver program provider responsible for employing, contracting with, or supervising the direct provider.

(36) Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(37) Texas Home Living (TxHmL) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by Texas Government Code §542.0001 [~~§534.001(11)(D)~~, Government Code].

(38) Victim--An individual receiving services who is alleged to have been abused, neglected, or exploited.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



SUBCHAPTER L. EMPLOYEE MISCONDUCT REGISTRY

26 TAC §711.1402, §711.1406

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 Chapters 542 and 546.

The amendments affect Texas Government Code §531.0055 and Chapters 542 and 546.

§711.1402. *How are the terms in this subchapter defined?*

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

(1) Administrative law judge--An attorney who serves as a hearings examiner and conducts an EMR hearing.

(2) Agency--An entity, person, facility, or provider, as defined in §711.1406 of this subchapter (relating to How is the term agency defined for the purpose of this subchapter?).

(3) APS--The Adult Protective Services division within the Department of Family and Protective Services, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code.

(4) Designated perpetrator--A person determined by Provider Investigations (PI) to have committed abuse, neglect, or exploitation who may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect or exploitation meets the definition of reportable conduct.

(5) DFPS--The Department of Family and Protective Services.

(6) Employee--A person who:

(A) works for:

(i) an agency, whether as an employee contractor, volunteer or agent; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Texas Government Code §546.0101 [Government Code §531.051];

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Family Code §261.404, or an individual receiving services through the consumer-directed service option, as defined by Texas Government Code §546.0101 [Government Code §531.051]; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Texas Government Code §546.0101 [Government Code §531.051].

(7) EMR--The Employee Misconduct Registry.

(8) EMR hearing--An administrative hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or exploitation.

(9) Executive Commissioner--The executive commissioner of HHSC or the executive commissioner's designee.

(10) HHSC--The Texas Health and Human Services Commission.

(11) Individual receiving services: an individual receiving services as provided in §711.3 of this chapter (relating to How are the terms in this chapter defined?).

(12) In-home investigation--An investigation conducted by DFPS Adult Protective Services (APS) under Title 40, Texas Administrative Code, Chapter 705 (relating to Adult Protective Services).

(13) Provider investigation--An investigation conducted by HHSC Provider Investigations under Chapter 48, Subchapter

F, Human Resources Code, or §261.404, Texas Family Code, as applicable.

(14) PI--The Provider Investigations program within the Regulatory Services Division of HHSC, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code.

(15) Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this subchapter (relating to What is reportable conduct?).

§711.1406. *How is the term agency defined for the purpose of this subchapter?*

(a) For the purpose of this chapter, the term "agency" has the meaning given by §48.401, Human Resources Code, as further clarified in this rule. Any terms used within the definition of "agency" have the meaning given by statute or elaborated upon by this chapter or Title 40, Texas Administrative Code, Chapter 705 (relating to Adult Protective Services). The purpose of this rule is to provide a non-exhaustive list of agencies, the employees of which are subject to being listed on the EMR if they are found to have committed reportable conduct. The list is illustrative and not exclusionary. Employees of agencies not specifically enumerated that are within the meaning of §48.401 continue to be eligible for the EMR without regard to whether the agency is specifically enumerated below.

(b) The term "agency" means:

(1) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(2) a person exempt from licensure who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Texas Government Code §542.0152 [Section 534.152, Government Code];

(3) an intermediate care facility for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code; or

(4) a provider investigated by HHSC under Subchapter F, Human Resources Code or §261.404, Family Code. Such providers include:

(A) a facility as defined in §711.3 of this chapter (relating to How are the terms in this chapter defined?);

(B) a community center, local mental health authority, and local intellectual and developmental disability authority, as defined in §711.3 of this chapter;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services (HCBS) as that term is defined in §48.251, Human Resources Code and which is the umbrella term for various long-term services and supports within the Medicaid program, whether delivered in a fee-for-service, managed care, or other service delivery model, and which includes but is not limited to:

- (i) Waiver programs including:
 - (I) community living assistance and support services (CLASS);
 - (II) Deaf Blind Multiple Disabilities;
 - (III) HCS;
 - (IV) TxHmL;
 - (V) Medically Dependent Child Program (MDCP); and
 - (VI) Youth Empowerment Services (YES);
- (ii) Community First Choice;
- (iii) Texas Dual Eligible Integrated Care Project;
- (iv) State plan services including:
 - (I) Community attendant services; and
 - (II) Personal attendant services;
- (v) Managed Care Programs including:
 - (I) HCBS - Adult Mental Health;
 - (II) STAR + PLUS Managed Care program; and
 - (III) STAR Kid Managed Care program; and
- (vi) any other program, project, waiver demonstration, or service providing long-term services and supports through the Medicaid program;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services as that term is defined in §48.251 and which include but are not limited to:

- (i) Targeted Case Management; and
- (ii) Psychiatric Rehabilitation services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A) - (E) of this paragraph; and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer directed service option, as defined by Texas Government Code §546.0101 [~~§531.051~~, 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.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.907, concerning What are the consequences of Licensing designating me as a controlling person; §745.911, concerning In what other circumstances may a person not serve as a controlling person at my operation; and §745.8605, concerning When can Licensing recommend or impose an enforcement action against my operation.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rules to Texas Government Code Chapter 526 that becomes effective on April 1, 2025. The proposed amendments update the affected citations to Texas Government Code.

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 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 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 because the amendments only update references to existing laws.

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 per-

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 24R085" in the subject line.

SUBCHAPTER G. CONTROLLING PERSONS

26 TAC §745.907, §745.911

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 Chapter 526.

The amendments affect Texas Government Code §531.0055 and Chapter 526.

§745.907. What are the consequences of Licensing designating me as a controlling person?

(a) If we designate you as a controlling person:

(1) We may not issue you a permit to operate a child-care operation for five years after our designation is sustained; and

(2) You may not be the controlling person at a child-care operation for five years after the designation is sustained.

(b) Our designation of you as a controlling person is sustained when the revocation or voluntary closure described in §745.905 of this title (relating to When will Licensing designate someone at my child-care operation as a controlling person?) is final and:

(1) You have waived your due process rights regarding the designation; or

(2) The designation is upheld after you have exhausted your due process rights.

(c) Another state agency may deny your application for a permit based on information obtained from us, as outlined in Texas Government Code Chapter 526, Subchapter J [Chapter 531 of the Government Code, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions)].

§745.911. In what other circumstances may a person not serve as a controlling person at my operation?

A person may not serve as a controlling person in a child-care operation if:

(1) We sustained the person as a controlling person within the previous five years;

(2) The person is ineligible to apply for a permit because of an adverse action that was sustained during the previous five years; or

(3) The person was a permit holder, controlling person, or otherwise listed on the application for a permit for a facility that had its permit denied, revoked, suspended, or terminated by a state health and human services agency in the last 10 years, as outlined in Texas Government Code Chapter 526, Subchapter J (relating to Licensing, Listing, or Registration of Certain Entities) [Chapter 531 of the Government Code, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions)]. Depending upon the circumstances that led to the previous permit denial, suspension, revocation, or termination and the person's relationship to that facility, we may determine that this person may not serve as a controlling person for your child-care operation.

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

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Karen Ray

Chief Counsel

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For further information, please call: (512) 291-9021



SUBCHAPTER L. ENFORCEMENT ACTIONS DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

26 TAC §745.8605

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§745.8605. *When can Licensing recommend or impose an enforcement action against my operation?*

We can recommend or impose an enforcement action any time we find one of the following:

- (1) You supplied false information or made false statements during the application process;
- (2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by minimum standards;
- (3) You do not have an acceptable reason for not having the required liability insurance in §745.251 of this chapter (relating to What are the acceptable reasons not to have liability insurance?);
- (4) You do not pay the required fees;
- (5) A single serious deficiency of a minimum standard, rule, or statute, including a finding of abuse or neglect or background check matches;
- (6) Several deficiencies that create an endangering situation;
- (7) A repetition or pattern of deficiencies;
- (8) An immediate threat or danger to the health or safety of children;
- (9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection or investigation, or the ability of the Department of Family and Protective Services to conduct an investigation of an allegation of abuse, neglect, or exploitation;
- (10) A failure to timely report necessary changes to Licensing;
- (11) A failure to comply with any restrictions or limits placed on your permit;
- (12) A failure to meet the terms and conditions of your probation;
- (13) A failure to comply with minimum standards, rules, or statutes at the end of the suspension period;
- (14) A failure to submit information to us within two days of a change in your controlling persons, as required in §745.903 of this chapter (relating to When and how must an operation submit controlling-person information to Licensing?);
- (15) You fail to correct by the compliance date any deficiency that is not pending due process;
- (16) You apply for a permit after we designate you as a controlling person, but before the designation is sustained;
- (17) It is within five years since your designation as a controlling person has been sustained;
- (18) You apply for a permit to operate a child care operation, and you are barred from operating a child care operation in another state;
- (19) You apply for a permit to operate a child care operation, and your permit to operate a child care operation in another state was revoked;
- (20) You apply for a permit to operate a child care operation, and your permit to operate was revoked, suspended, or terminated by another Texas state agency as outlined in Texas Government Code Chapter 526, Subchapter J [Texas Government Code, Chapter

531, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions)];

(21) You apply for a permit to operate a child care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this chapter (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.340(b) of this chapter (relating to What factors will we consider when evaluating an application for a permit?).

(22) You operate a child care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(23) A reason set forth in Texas Human Resources Code, §42.078;

(24) A failure to pay an administrative penalty under Texas Human Resources Code, §42.078;

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation;

(26) During the application process you were exempt from the public notice and hearing requirements under §745.273(b) of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), but you never provide or cease to provide trafficking victim services and fail to meet the public notice and hearing requirements; or

(27) You provide care to an unlawfully present individual in violation of Chapter 748, Subchapter B, Division 3 of this title (relating to Care of Unlawfully Present Individuals).

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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CHAPTER 926. STATE FACILITY
REQUIREMENTS TO ENHANCE THE
SAFETY OF INDIVIDUALS RECEIVING
SERVICES
SUBCHAPTER B. CRIMINAL HISTORY
CHECKS AND REGISTRY CLEARANCES AT
STATE FACILITIES

26 TAC §926.51

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §926.51, concerning Definitions.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code Chapter 546 that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five

years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§926.51. Definitions.

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

(1) Abuse--An act or failure to act that, with regard to an individual, meets the definition of "physical abuse," "sexual abuse," or "verbal/emotional abuse" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "abuse," "physical abuse," "sexual abuse," "verbal abuse," "psychological abuse," or "threat" in the Centers for Medicare & Medicaid Services (CMS) State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(2) Administrative death review--An administrative, quality-assurance activity related to the death of an individual to identify non-clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(3) Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(4) Alleged offender--An individual who was committed or transferred to a facility:

(A) under Texas Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Texas Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(5) Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(6) Attending physician--The physician who has primary responsibility for the treatment and care of an individual.

(7) Bedroom--The room at a facility in which an individual usually sleeps.

(8) Behavioral crisis--An imminent safety situation that places an individual or others at serious risk of violence or injury if no intervention occurs.

(9) CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(10) Capacity--An individual's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(11) Chemical restraint--Any drug prescribed or administered to sedate an individual or to temporarily restrict an individual's freedom of movement for the purpose of managing the individual's behavior.

(12) Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to Texas Family Code, Chapter 31.

(13) Clinical death review--A clinical, quality-assurance, peer review activity related to the death of an individual and conducted in accordance with statutes that authorize peer review in Texas to identify clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(14) Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(15) Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(16) Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(17) Conviction--The adjudication of guilt for a criminal offense.

(18) Covert electronic monitoring--Electronic monitoring that is not open and obvious, and that is conducted when the director of the facility in which the monitoring is being conducted has not been informed about the device by the individual, by a person who placed the device in the bedroom, or by a person who uses the device.

(19) Crisis intervention--The use of interventions, including physical, mechanical, or chemical restraint, in a behavioral crisis,

after less restrictive measures have been determined to be ineffective or not feasible.

(20) Crisis intervention plan--A component of the individual support plan (ISP) action plan that provides instructions for staff on how to effectively and safely use restraint procedures, as long as they are needed to prevent imminent physical injury in a behavioral crisis when less restrictive prevention or de-escalation procedures have failed and the individual's behavior continues to present an imminent risk of physical injury. The plan is developed with input from the PCP and direct support professionals familiar with the individual and the individual and LAR and includes a description of how the individual behaves during a behavioral crisis, along with information about the types of restraints that have been most effective with the individual, staff actions to be avoided because they have been ineffective in the past in preventing or reducing the need for restraints, the restraint's maximum duration, a description of the behavioral criteria for determining when the imminent risk of physical injury abates, and reporting requirements. A crisis intervention plan is not considered a therapeutic intervention. It is implemented only to ensure that restraint procedures are carried out effectively and safely and may be adjusted depending upon the individual's progress in the ISP action plan.

(21) DADS--Department of Aging and Disability Services or its successor agency.

(22) DADS Commissioner--The commissioner of DADS or a position at the Health and Human Services Commission that assumes a duty of the commissioner of DADS described in this chapter.

(23) Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, Article 42.12, §2.

(24) Designated representative--A person designated by an individual or an individual's LAR to be a spokesperson or advocate for the individual.

(25) DFPS--Department of Family and Protective Services or its successor agency.

(26) Director--The director of a facility or the director's designee.

(27) Direct support professional--An unlicensed employee who directly provides services to an individual.

(28) Electronic monitoring--The placement of an electronic monitoring device in an individual's bedroom and making a tape or a recording with the device.

(29) Electronic monitoring device (EMD)--A device that:

(A) includes:

(i) a video surveillance camera; and

(ii) an audio device designed to acquire communications or other sounds; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

(30) Employee--A person employed by DADS whose assigned duty station is at a facility.

(31) Exploitation--An act or failure to act that, with regard to an individual, meets the definition of "exploitation" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "mistreatment" in the CMS State Operations Manual, Appendix J,

Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(32) Facility--A state supported living center or the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center.

(33) Family member--An individual's parent, spouse, children, or siblings.

(34) Forensic facility--A facility designated under Texas Health and Safety Code (THSC), §555.002(a) for the care of high-risk alleged offenders.

(35) Guardian--An individual appointed and qualified as a guardian of the person under Texas Estates Code, Title 3.

(36) High-risk alleged offender--An alleged offender who has been determined to be at risk of inflicting substantial physical harm to another person in accordance with THSC §555.003.

(37) Inconclusive--Term used to describe an allegation when there is not a preponderance of credible evidence to indicate that abuse, neglect, or exploitation did or did not occur due to lack of witnesses or other available evidence.

(38) Independent mortality review organization--An independent organization designated in accordance with Texas Government Code Chapter 546, Subchapter O [Texas Government Code, Chapter 531, Subchapter U], to review the death of an individual.

(39) Individual--A person with an intellectual disability or a condition related to an intellectual disability who is receiving services from a facility.

(40) Individual support plan (ISP)--An integrated, coherent, person-directed plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(41) Interdisciplinary team (IDT)--A team consisting of an individual, the individual's legally authorized representative (LAR) and qualified developmental disability professional, other professionals dictated by the individual's strengths, preferences, and needs, and staff who regularly and directly provide services and supports to the individual. The team is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations for services based on the personal goals and preferences of the individual using a person-directed planning process, including recommendations on whether the individual is best served in a facility or community setting.

(42) Legally adequate consent--Consent from a person who:

(A) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(B) has been informed of and understands:

(i) the nature, purpose, consequences, risks, and benefits of the medication, treatment, or procedure for which the consent is given;

(ii) alternatives to the medication, treatment, or procedure for which the consent is given;

(iii) that withdrawing or refusing to give consent will not prejudice the future provision of care and services; and

(iv) the method of administration, if the person is giving consent for an unusual or hazardous treatment procedure, experimental research, organ transplantation, or nontherapeutic surgery; and

(C) consents voluntarily, free from coercion or undue influence.

(43) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, including a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(44) Life-sustaining medical treatment--Treatment that, based on reasonable medical judgment, sustains the life of an individual and without which the individual will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered necessary to provide comfort care or any other medical care provided to alleviate an individual's pain.

(45) Mechanical restraint--Any device attached or adjacent to an individual's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. The term does not include a protective device.

(46) Medical emergency--Any illness or injury that requires immediate assessment and treatment by medical staff for conditions considered to be life threatening, including, but not limited to, respiratory or cardiac arrest, choking, extreme difficulty in breathing, status epilepticus, allergic reaction to an insect sting, snake bite, extreme pain in the chest or abdomen, poisoning, hemorrhage, loss of consciousness, sudden loss of function of a body part, injuries resulting in broken bones, possible neck or back injuries, or severe burns.

(47) Medical intervention--Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or advanced practice registered nurse in accordance with general acceptable clinical practice.

(48) Medical restraint--A health-related protection prescribed by a primary care provider (PCP) or dentist that is necessary for the conduct of a specific medical or dental procedure, or is only necessary for protection during the time that a medical or dental condition exists, for the purpose of preventing an individual from inhibiting or undoing medical or dental treatment. Medical restraint includes pre-treatment sedation.

(49) Medical restraint plan--A component of the ISP action plan that provides instructions for staff on how to effectively and safely carry out medical restraint procedures. The plan is developed with input from the PCP or dentist and meaningful input from the individual and LAR and includes a description of the individual's behaviors that do not allow for a safe and effective implementation of needed medical or dental procedures, information about the types of restraints that have been most effective with the individual, a description of the criteria for releasing the restraint, and reporting requirements. A medical restraint plan is not considered a therapeutic intervention and may be adjusted depending upon the individual's progress in the ISP action plan.

(50) Medication-related emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the individual overtly or continually makes or commits.

(51) Mental health services provider--Has the meaning assigned in Texas Civil Practice and Remedies Code, Chapter 81.

(52) Neglect--An act or failure to act that, with regard to an individual, meets the definition of "neglect" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "neglect" in the CMS State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(53) Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(54) Perpetrator--A person who has committed abuse, neglect, or exploitation.

(55) Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(56) Physical restraint--Any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. Physical restraint does not include brief and limited use of physical guidance, positioning, or prompting techniques used to redirect an individual or assist, support, or protect the individual during a functional therapeutic or physical exercise activity; response blocking and brief redirection used to interrupt an individual's limbs or body without the use of force so that the occurrence of challenging behavior is prevented; holding an individual, without the use of force, to calm or comfort, or hand holding to escort an individual from one area to another without resistance from the individual; and response interruption used to interrupt an individual's behavior, using facility-approved techniques.

(57) Physician on duty--The physician designated by the facility's medical director to provide medical care or respond to emergencies outside regular working hours.

(58) Positive behavior support plan (PBS)--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

(59) Preponderance of the evidence--Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; that is, evidence that, as a whole, shows that the fact sought to be proved is more probable than not.

(60) Primary care provider (PCP)--A physician, advanced practice registered nurse, or physician assistant who provides primary care to a defined population of patients. The PCP is involved in health promotion, disease prevention, health maintenance, and diagnosis and treatment of acute and chronic illnesses.

(61) Prone restraint--Any physical or mechanical restraint that places the individual in a face-down position. Prone restraint does

not include when an individual is placed in a face-down position as a necessary part of a medical intervention, or when an individual moves into a prone position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Prone restraint is prohibited.

(62) Protection and advocacy organization--The protection and advocacy system for Texas designated in accordance with the Code of Federal Regulations, Title 45, §1326.20.

(63) Protective mechanical restraint for self-injurious behavior--A type of mechanical restraint applied before an individual engages in self-injurious behavior, for the purpose of preventing or mitigating the danger of the self-injurious behavior because there is evidence that the targeted behavior can result in serious self-injury when it occurs and intensive, one-to-one supervision and treatment have not yet reduced the danger of self-injury. Examples include, but are not limited to, protective head gear for head banging, arm splints for eye gouging, or mittens for hand-biting. The term does not include medical restraints or protective devices.

(64) Protective mechanical restraint plan for self-injurious behavior--A component of the ISP action plan that provides instructions for staff on how to effectively and safely apply the protective mechanical restraint that is used to prevent or mitigate the effects of serious self-injurious behavior. The plan is developed with input from direct support professionals familiar with the individual and meaningful input from the individual and LAR, and includes a description of the individual's self-injurious behaviors, the type of restraint to be used, the restraint's maximum duration, and the circumstances to apply and remove the restraint. The plan must identify any low-risk situations when the restraint may be safely removed, what staff should do during those situations to continue to protect the individual from harm, and adjustments in staff instructions as progress is made for gradually eliminating the use of the restraints, including details on any specialized staff training and reporting. The plan is not considered a therapeutic intervention and is adjusted depending upon the individual's progress in the ISP action plan and an evaluation by the PCP that the individual's behavior is no longer at the dangerous level that is producing serious self-injury.

(65) Psychotropic medication--A medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorder and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. Psychotropic medication, sometimes referred to as "psychoactive medication," includes the following categories of medication:

- (A) antipsychotics or neuroleptics;
- (B) antidepressants;
- (C) agents for control of mania or depression;
- (D) antianxiety agents;
- (E) sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) psychomotor stimulants.

(66) Registered nurse--A nurse licensed by the Texas Board of Nursing to practice professional nursing in Texas.

(67) Registries--

(A) The Nurse Aide Registry maintained by DADS in accordance with §94.12 of this title (relating to Findings and Inquiries); and

(B) The Employee Misconduct Registry maintained by DADS in accordance with Chapter 93 of this title (relating to Employee Misconduct Registry (EMR)).

(68) Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(69) Restraint monitor--A designated facility employee who has received competency-based training and demonstrated proficiency in the application and assessment of restraints, who has experience working directly with individuals with developmental disabilities, and who is trained to conduct a face-to-face assessment of the individual who was restrained and the staff involved in the restraint to review the application and results of the restraint.

(70) Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(71) SSLC--A state supported living center.

(72) State office mortality review--A quality assurance activity to review data related to the death of an individual to identify trends, best practices, training needs, policy changes, or facility or systemic issues that need to be addressed to improve services at facilities.

(73) Supine restraint--Any physical or mechanical restraint that places the individual on his or her back. Supine restraint does not include when an individual is placed in a supine position as a necessary part of a medical restraint, or when an individual moves into a supine position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Supine restraint does not include persons who have freedom of movement in a hospital bed or dental chair that is at a reclined position. Supine restraint is prohibited.

(74) THSC--Texas Health and Safety Code.

(75) Treating physician--A physician who has provided medical or psychiatric treatment or evaluation and has an ongoing treatment relationship with an individual.

(76) Unconfirmed--Term used to describe an allegation in which a preponderance of evidence exists to prove that it did not occur.

(77) Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(78) Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(79) Victim--An individual who has been or is alleged to have been abused, neglected, or exploited.

(80) Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 5, 2025
For further information, please call: (512) 221-9021

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CHAPTER 967. CLIENT CARE OF INDIVIDUALS RECEIVING SERVICES AT STATE SUPPORTED LIVING CENTERS SUBCHAPTER A. STATE SUPPORTED LIVING CENTER INDEPENDENT MORTALITY REVIEW

26 TAC §967.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §967.1, concerning Independent Mortality Review.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code Chapter 546 that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

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 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 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§967.1. *Independent Mortality Review.*

The Texas Health and Human Services Commission contracts with an independent mortality review organization pursuant to Texas Government Code Chapter 546, Subchapter O [§531.851(e)]. A state supported living center (SSLC) must report the death of a person with an intellectual or developmental disability who, at the time of the person's death or at any time during the 24-hour period before the person's death, resided in or received services from the SSLC. The death must be reported to the independent mortality review organization within 72 hours after the pronouncement of death.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.30

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §133.30, concerning telemedicine, telehealth, and teledentistry services. Section 133.30 implements Texas Labor Code §413.011. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

EXPLANATION. The amendments to §133.30 allow a treating doctor to use telemedicine or telehealth to certify maximum medical improvement (MMI) under §§130.1 and 130.2 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment, under the following conditions. The injured employee must have been examined by the treating doctor for the condition in question at least once before the examination to certify MMI. The injured employee must consent to the examination to certify MMI by telemedicine or telehealth. The condition in question must qualify as a minor injury, such as §130.2(a)(2) of this title contemplates, that requires no additional treatment, and has resulted in no impairment. A minor injury does not require application of the AMA Guides, so under §130.1 of this title, the treating doctor is allowed to certify MMI with no impairment.

The amendments specify that such an evaluation must be billed in compliance with the MMI billing requirements in §134.250 of this title, concerning maximum medical improvement evaluations and impairment rating examinations by treating doctors. The treating doctor's billing and reimbursement are the same for an in-person MMI evaluation and a telemedicine MMI evaluation. They do not expand the scope of practice or authorize new treatments. Health care providers should refer to their licensing boards' rules for practicing telemedicine and telehealth. The amendments do not allow a doctor to assign an impairment rating by a telemedicine or telehealth examination. The amendments are proposed to be effective for examinations conducted by treating doctors to certify MMI by telemedicine or telehealth conducted on or after January 1, 2025.

Amending §133.30 is necessary to ensure better and more convenient access to evaluations necessary to certify MMI, to ensure that more required MMI evaluations are conducted on time, and to clarify how doctors must bill and be reimbursed for MMI evaluations conducted by telemedicine or telehealth. For example, when a treating doctor treats and releases an injured employee for a minor injury, such as a scrape or a bruise, and does not anticipate that the injured employee will need additional treatment, the amendments allow the treating doctor to use telemedicine or telehealth to determine that the injured employee has reached MMI but has no permanent impairment. Treating doctors can certify MMI under current rules, and the amendments just allow them to do so by telemedicine or telehealth under specific conditions. In addition, the number of disputes from treating doctor certifications of MMI under current rules is very low. Based on medical billing data reported to DWC, treating doctors submitted over 36,000 bills in calendar year 2023 for these MMI examinations. Over 34,000 claims were associated with those bills containing CPT code 99455, and of those claims, only 259 were associated with an MMI or impairment rating dispute.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work. Amending §133.30 to allow a treating doctor to use telemedicine or telehealth to certify MMI and to ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 meets the requirements in Labor Code §413.011.

DWC invited public comments on an informal draft posted on DWC's website in July 2024 and revised the text to be more specific about the conditions under which a treating doctor may perform a telemedicine or telehealth examination to certify MMI.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local and state government entities

are only involved in enforcing or complying with the proposed amendments when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed amendments.

Deputy Commissioner Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefit of ensuring better and more convenient access to evaluations necessary to certify MMI. Injured employees and health care providers will benefit from being able to attend those MMI evaluations remotely and being able to schedule them at less disruptive times, without having to travel. The proposed amendments will also have the public benefit of ensuring that DWC's rules conform to Labor Code §413.011 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §413.011 because they do not impose requirements beyond those in the statute. Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and enhance a timely and appropriate return to work. As a result, any cost associated with amending §133.30 to allow a treating doctor to use telemedicine or telehealth to certify MMI and ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments allow a treating doctor to use telemedicine or telehealth to certify MMI and ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed rule enhances efficiency and access to MMI evaluations by allowing a treating doctor to use telemedicine or telehealth to evaluate whether an injured employee has reached MMI. The proposed amendments do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on January 13, 2025. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10 a.m., Central time, on January 8, 2025. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

STATUTORY AUTHORITY. DWC proposes §133.30 under Labor Code §§413.011, 413.0511, 402.00111, 402.00116, and 402.061.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; review compliance with those guidelines; regulate or perform other acts related to medical benefits as required by the commissioner; and determine minimal modifications to the reimbursement method-

ology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 133.30 implements Labor Code §413.011, enacted by House Bill 752, 73rd Legislature, Regular Session (1993), and last amended in 2007.

§133.30. *Telemedicine, Telehealth, and Teledentistry Services.*

(a) (No change.)

(b) For the purposes of this section:

(1) "Telemedicine [~~telemedicine~~] services" means telemedicine medical services as defined in Occupations Code §111.001.~~;~~[;]

(A) The term includes an examination by a treating doctor to certify maximum medical improvement (MMI), conducted on or after January 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telemedicine; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(2) "Telehealth [~~telehealth~~] services" means telehealth services as defined in Occupations Code §111.001.~~;~~[;] ~~and~~

(A) The term includes an examination by a treating doctor to certify MMI, conducted on or after January 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telehealth; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(3) "~~Teledentistry~~ [~~teledentistry~~] services" means teledentistry dental services as defined in Occupations Code §111.001.~~[§]~~

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services);

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline); ~~and~~

(3) MMI billing requirements in §134.250 of this title (relating to Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors); and

(4) ~~[(3)]~~ provisions of Chapter 133 of this title.

(d) (No change.)

(e) (No change.)

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

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Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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