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# IN THIS ISSUE

## **GOVERNOR**

Appointments .....10161

## **ATTORNEY GENERAL**

Opinions .....10163

## **TEXAS ETHICS COMMISSION**

Ethics Advisory Opinions .....10165

## **PROPOSED RULES**

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### MEDICAID MANAGED CARE

1 TAC §§353.1502, 353.1504, 353.1506 .....10167

#### MEDICAID HEALTH SERVICES

1 TAC §354.1006 .....10171

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### USED AUTOMOTIVE PARTS RECYCLERS

16 TAC §§87.1, 87.10, 87.71, 87.72, 87.78, 87.81 .....10173

### **TEXAS EDUCATION AGENCY**

#### STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS

19 TAC §§67.27, 67.29, 67.31, 67.33, 67.39, 67.41 .....10177

19 TAC §67.61, §67.63 .....10181

#### CURRICULUM REQUIREMENTS

19 TAC §74.3 .....10181

#### TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

19 TAC §127.59, §127.61 .....10184

19 TAC §127.262, §127.263 .....10188

19 TAC §127.510, §127.511 .....10192

19 TAC §§127.569, 127.571, 127.604 .....10196

19 TAC §§127.689 - 127.691, 127.695 - 127.699 .....10204

19 TAC §127.773 .....10217

### **HEALTH AND HUMAN SERVICES COMMISSION**

#### OMBUDSMAN SERVICES

26 TAC §§87.1, 87.3, 87.5, 87.7 .....10220

26 TAC §§87.15, 87.17, 87.19, 87.21, 87.23, 87.25, 87.27, 87.29, 87.31, 87.33, 87.35 .....10221

26 TAC §87.41, §87.43 .....10225

26 TAC §87.51 .....10225

26 TAC §87.61 .....10225

26 TAC §§87.71, §87.73 .....10226

26 TAC §87.81 .....10226

26 TAC §§87.101, 87.103, 87.105, 87.107, 87.109, 87.111, 87.113, 87.115, 87.117, 87.119 .....10227

26 TAC §§87.201, 87.203, 87.205, 87.207, 87.209, 87.211, 87.213, 87.215, 87.217, 87.219 .....10227

26 TAC §§87.301, 87.303, 87.305, 87.307, 87.309, 87.311, 87.313, 87.315, 87.317, 87.319, 87.321 .....10227

26 TAC §§87.401, 87.403, 87.405, 87.407, 87.409, 87.411, 87.413, 87.415, 87.417, 87.419 .....10228

26 TAC §§87.501, 87.503, 87.505, 87.507, 87.509, 87.511, 87.513, 87.515, 87.517, 87.519 .....10228

#### FAMILY VIOLENCE PROGRAM

26 TAC §356.1 .....10239

26 TAC §§356.101 - 356.104 .....10242

26 TAC §§356.201 - 356.206, 356.208 .....10244

26 TAC §356.207 .....10245

26 TAC §§356.301 - 356.303 .....10245

26 TAC §§356.401 - 356.403, 356.405 .....10246

26 TAC §§356.406 - 356.408 .....10247

26 TAC §§356.501, 356.503 - 356.507, 356.510 .....10248

26 TAC §356.508 .....10249

26 TAC §§356.601 - 356.604, 356.606, 356.607, 356.609 - 356.621, 356.623, 356.626, 356.627, 356.629, 356.631, 356.635 - 356.637 .....10249

26 TAC §§356.603, 356.622, 356.624, 356.625, 356.630, 356.632, 356.633 .....10255

26 TAC §§356.701 - 356.711, 356.713, 356.714, 356.716, 356.718 - 356.720 .....10255

26 TAC §§356.705, 356.710, 356.712, 356.716, 356.717, 356.719 .....10259

26 TAC §356.803 .....10259

26 TAC §356.901, §356.902 .....10260

26 TAC §§356.1001 - 356.1003 .....10260

26 TAC §§356.1101 - 356.1103, 356.1105 .....10261

26 TAC §356.1201, §356.1202 .....10263

26 TAC §§356.1301 - 356.1304, 356.1306, 356.1308 - 356.1313, 356.1315 - 356.1319, 356.1321, 356.1324, 356.1325 .....10263

26 TAC §§356.1303, 356.1314, 356.1320, 356.1322 .....10267

26 TAC §§356.1401, 356.1404, 356.1406, 356.1408 .....10268

26 TAC §§356.1401 - 356.1405, 356.1408, 356.1409 .....10268

26 TAC §§356.1501 - 356.1504 .....10270

26 TAC §§356.1602, 356.1604, 356.1605 .....10271

26 TAC §§356.1701 - 356.1703 .....10272

26 TAC §§356.1801 - 356.1803, 356.1805 .....	10273	37 TAC §651.402.....	10328
26 TAC §356.1806, §356.1807.....	10274	<b>WITHDRAWN RULES</b>	
26 TAC §§356.1901 - 356.1903 .....	10275	<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>	
26 TAC §§356.2001 - 356.2004, 356.2006, 356.2007, 356.2009 - 356.2019, 356.2021, 356.2024, 356.2026, 356.2029, 356.2033 - 356.2035 .....	10275	<b>WILDLIFE</b>	
26 TAC §§356.2003, 356.2020, 356.2022, 356.2028, 356.2030, 356.2031 .....	10280	31 TAC §65.82.....	10329
26 TAC §§356.2101 - 356.2108, 356.2110, 356.2112, 356.2114, 356.2115.....	10281	<b>ADOPTED RULES</b>	
26 TAC §§356.2104, 356.2107, 356.2109, 356.2112 - 356.2114	10283	<b>TEXAS HEALTH AND HUMAN SERVICES COMMISSION</b>	
26 TAC §356.2201.....	10284	MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY	
<b>STATE CHILDREN'S HEALTH INSURANCE PROGRAM</b>		1 TAC §371.1721 .....	10331
26 TAC §370.456.....	10284	<b>TEXAS DEPARTMENT OF AGRICULTURE</b>	
<b>TEXAS DEPARTMENT OF INSURANCE</b>		<b>LICENSING</b>	
<b>STATE FIRE MARSHAL</b>		4 TAC §2.1.....	10337
28 TAC §34.515.....	10288	<b>HEALTH AND HUMAN SERVICES COMMISSION</b>	
28 TAC §34.614.....	10288	DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES	
28 TAC §34.714.....	10289	26 TAC §260.5, §260.7.....	10339
28 TAC §34.814.....	10290	26 TAC §260.59.....	10347
28 TAC §34.1302.....	10292	26 TAC §260.203, §260.205.....	10347
<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>		26 TAC §260.341.....	10350
<b>FINANCE</b>		26 TAC §260.357.....	10351
31 TAC §53.10.....	10292	<b>TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)</b>	
<b>FISHERIES</b>		26 TAC §262.3, §262.5.....	10354
31 TAC §§57.377 - 57.379, 57.381, 57.382, 57.384 .....	10293	26 TAC §262.103.....	10359
<b>OYSTERS, SHRIMP, AND FINFISH</b>		26 TAC §262.202.....	10362
31 TAC §58.11, §58.30.....	10297	26 TAC §262.301, §262.304.....	10363
<b>WILDLIFE</b>		26 TAC §262.401.....	10363
31 TAC §§65.80, 65.81, 65.88.....	10312	26 TAC §262.701.....	10365
31 TAC §§65.81 - 65.85 .....	10314	<b>HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)</b>	
31 TAC §§65.90, 65.92, 65.94, 65.95, 65.99.....	10315	26 TAC §263.3, §263.5.....	10370
31 TAC §§65.602 - 65.605, 65.610, 65.611.....	10318	26 TAC §263.104.....	10377
<b>RESOURCE PROTECTION</b>		26 TAC §263.301, §263.304.....	10380
31 TAC §69.4, §69.8.....	10321	26 TAC §263.501.....	10381
31 TAC §69.304, §69.305.....	10321	26 TAC §263.601.....	10381
<b>TEXAS FORENSIC SCIENCE COMMISSION</b>		26 TAC §263.901.....	10383
<b>DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES</b>		<b>TEXAS DEPARTMENT OF INSURANCE</b>	
37 TAC §651.8.....	10323		
37 TAC §651.202, §651.207.....	10323		

LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

28 TAC §3.9901 ..... 10388

**DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

**CHILD PROTECTIVE SERVICES**

40 TAC §700.115 ..... 10390

40 TAC §700.211 ..... 10390

40 TAC §§700.328, 700.332, 700.334 ..... 10390

40 TAC §§700.501 - 700.512 ..... 10391

40 TAC §§700.513 - 700.528 ..... 10391

40 TAC §700.844 ..... 10391

40 TAC §700.1039 ..... 10391

40 TAC §700.1733 ..... 10392

**RULE REVIEW**

**Proposed Rule Reviews**

Texas Education Agency ..... 10393

Texas State Board of Pharmacy ..... 10393

**Adopted Rule Reviews**

Comptroller of Public Accounts ..... 10394

Texas Juvenile Justice Department ..... 10394

**TABLES AND GRAPHICS**

**IN ADDITION**

**Office of the Attorney General**

Child Support Tax Charts 2025 ..... 10411

**Comptroller of Public Accounts**

Certification of the Single Local Use Tax Rate for Remote Sellers - 2025 ..... 10411

Local Sales Tax Rate Changes Effective January 1, 2025 ..... 10411

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings ..... 10413

**Texas Commission on Environmental Quality**

Agreed Orders ..... 10414

Correction of Error ..... 10416

Enforcement Orders ..... 10416

Extension of Public Comment Period on Proposed List of Best Management Practices for Certain Operational Issues at Aggregate Production Operations--Legislative Requirement from Agency Sunset Review ..... 10418

Notice of Correction to Agreed Order Number 20 ..... 10418

Notice of District Petition TCEQ Internal Control No. D-07082024-020 ..... 10418

Notice of District Petition TCEQ Internal Control No. D-11132024-019 ..... 10419

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions ..... 10420

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions ..... 10420

Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action ..... 10421

**General Land Office**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program ..... 10422

**Office of the Governor**

Notice of Available Funding Opportunities ..... 10424

**Texas Health and Human Services Commission**

Public Notice: Texas State Plan Amendment ..... 10426

**Texas Department of Insurance**

Company Licensing ..... 10426

**Texas Department of Licensing and Regulation**

Notice of Vacancies on Code Enforcement Officers Advisory Committee ..... 10426

**Texas Lottery Commission**

Scratch Ticket Game Number 2622 "LUCKY NO. 7" ..... 10427

Scratch Ticket Game Number 2630 "COLOSSAL CASH" ..... 10432

**Texas Parks and Wildlife Department**

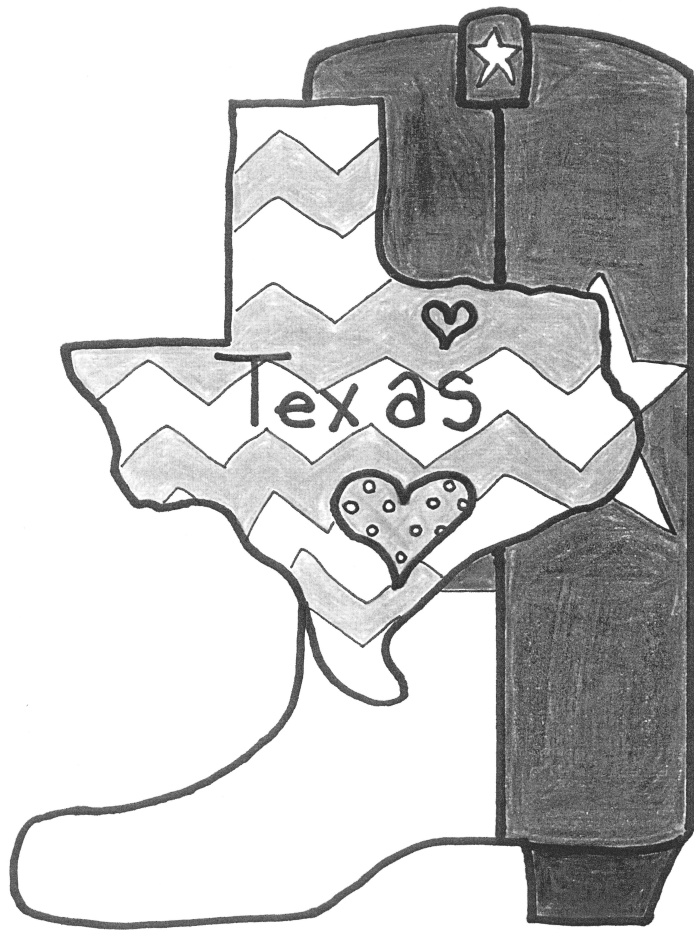
Notice of Proposed Real Estate Transactions ..... 10439

**Public Utility Commission of Texas**

Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider 10440

**State Securities Board**

Correction of Error ..... 10440



# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for December 4, 2024

Appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2025, Divyansu Patel, M.D. of Austin, Texas (replacing Erin S. Holt of Bonham, who resigned).

### Appointments for December 5, 2024

Appointed to the State Independent Living Council for a term to expire October 24, 2027, Cindy G. Burkett of Seagoville, Texas (replacing Janet M. "Jan" McSorley of Austin, whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2027, Michael E. Garrett of Missouri City, Texas (Mr. Garrett is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2027, David J. Lunt of Haslet, Texas (Mr. Lunt is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2027, PiPa S. McCollister of Cleburne, Texas (replacing Heisha K. Freeman of Fate, whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2027, Seth S. Wells of Beaumont, Texas (replacing Joseph A. "Joe" Rogers of Amarillo, whose term expired).

### Appointments for December 6, 2024

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2027, Sandra C. "Sandy" Fletcher of Sugar Land, Texas (replacing David G. Gutierrez of Salado, who resigned).

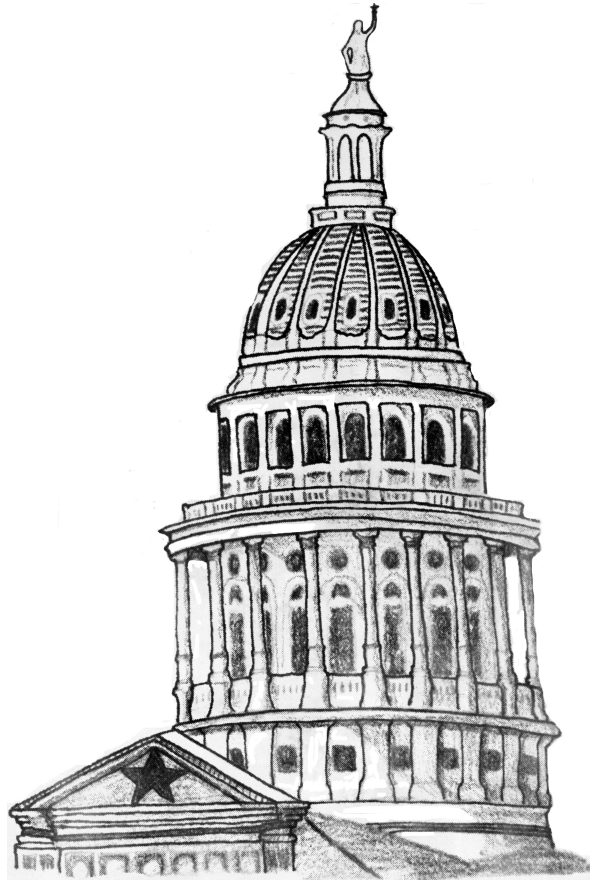
### Appointments for December 10, 2024

Appointed to the Family and Protective Services Council for a term to expire February 1, 2027, Michael J. Barton of Sugar Land, Texas (replacing Gregory "Greg" Hamilton of Hutto, who resigned).

Greg Abbott, Governor

TRD-202405961





# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

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## Opinions

### Opinion No. KP-0476

The Honorable James D. Granberry

Nueces County District Attorney

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Whether a district clerk may refuse to electronically file a document in a criminal case based on the district clerk's opinion that the document fails to comply with the Judicial Committee on Information Technology Standards (RQ-0543-KP)

### SUMMARY

A district clerk may not refuse an electronically filed document in a criminal case based on the district clerk's opinion that the document

fails to comply with technology standards set by the Judicial Committee on Information Technology (JCIT). However, a clerk's return of documents for correction pursuant to JCIT technology standard section 4.8.4 and Rule 2.6 of the Statewide Rules Governing Electronic Filing in Criminal Cases does not constitute a refusal of such documents.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202405952

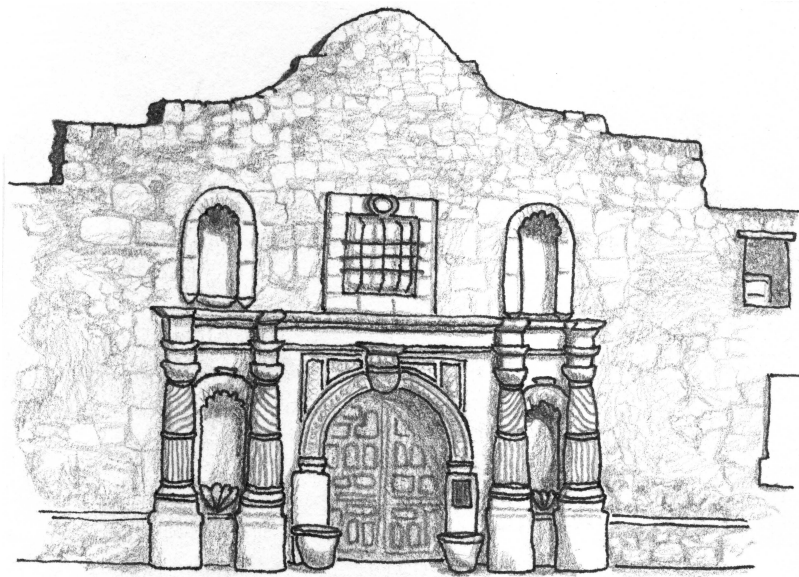
Justin Gordon

General Counsel

Office of the Attorney General

Filed: December 10, 2024







# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Ethics Advisory Opinions

EAO-614: Does the rule defining a "principal purpose" of a political committee (TEC Rule §20.1(17)) apply to a nonprofit corporation? If so, what threshold must a nonprofit corporation remain below to avoid becoming a political committee. (AOR-707).

### SUMMARY

By definition, two or more persons must act in concert with a principal purpose of making political expenditures or accepting political contributions to form a political committee. If a group of persons form a nonprofit corporation that has as a principal purpose accepting political contributions or making political expenditures, the corporation is a political committee.

To determine whether a group has a principal purpose of making political expenditures, the TEC will consider all the facts and circumstances concerning the group's actual and planned activities related to making political expenditures.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 3, 2024.

TRD-202405900

Jim Tinley

General Counsel

Texas Ethics Commission

Filed: December 6, 2024



EAO-615: Whether an officer of a state agency meets the definition of an "appointed officer" in Chapter 572 of the Government Code when the officer is not appointed to a term of service fixed in statute or state constitution beyond the default maximum term specified by Article XVI, Section 30(a) of the Texas Constitution. (AOR-717CI).

### SUMMARY

When the Constitution or statute does not fix a term of service for a particular officer of a state agency, the officer nevertheless serves a default term of not more than two years. Such an officer of a state agency is required to file a personal financial statement. Therefore, the TEC overrules prior advisory opinions to the extent they are inconsistent with this opinion.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 3, 2024.

TRD-202405901

Jim Tinley

General Counsel

Texas Ethics Commission

Filed: December 6, 2024



EAO-616: Whether the generally applicable lobby registration and disclosure requirements apply to a person who lobbies on behalf of a tribal nation. (AOR-718).

### SUMMARY

The generally applicable lobby registration and disclosure requirements apply to a person who lobbies on behalf of a tribal nation.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 3, 2024.

TRD-202405902

Jim Tinley

General Counsel

Texas Ethics Commission

Filed: December 6, 2024





# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER R. TELECOMMUNICATIONS IN MANAGED CARE SERVICE COORDINATION AND ASSESSMENTS

##### 1 TAC §§353.1502, 353.1504, 353.1506

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), proposes amendments to §353.1502, concerning Definitions; §353.1504, concerning Use of Telecommunications in Service Coordination and Service Management; and §353.1506, concerning Additional Requirements for Assessments and Service Management in STAR Health.

##### BACKGROUND AND PURPOSE

The proposal allows a STAR Health managed care organization (MCO) to conduct assessments and provide service coordination services using telecommunications or information technology when it is clinically effective and cost-effective to do so.

HHSC is proposing amended rules in Chapter 353 that will reflect the STAR Health programmatic changes and incorporate service coordination levels, replace the term "service management" with "service coordination," and apply House Bill 4, 87th Legislature, Regular Session, 2021 telecommunications allowances to the new service coordination levels.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.1502: (1) replaces the term "Interactive" with the term "Synchronous interactive" in the definitions of "Audio-only" and "Audio-visual;" (2) removes the definitions for "service management" and "service manager;" (3) renumbers the remaining paragraphs accordingly; and (4) updates language for better readability.

The proposed amendment to §353.1504: (1) removes "and Service Management" from the title of the rule; (2) replaces references to "service management" with "service coordination"; (3) replaces references to "service manager" with "service coordinator;" (4) adds the current contract requirement for the STAR Health MCO to ensure all members receive at least one in-person service coordination visit per year; (5) adds a requirement that allows HHSC to issue direction during a declared state of disaster to the STAR Health MCO regarding whether service coordination that is required to be conducted using face-to-face communication may be conducted through audio-only communi-

cation; (6) updates language for better readability; and (7) makes minor edits to formatting.

The proposed amendment to §353.1506: (1) replaces the term "Management" with "Coordination" in the title of the rule; (2) replaces the term "service management" with "service coordination;" and (3) updates language for better readability.

##### FISCAL NOTE

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

##### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

The rules only apply to Medicaid MCOs, and no Texas Medicaid MCO qualifies as a small business, micro-business, or rural community.

##### 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

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be STAR Health members will have clear options to receive assessments and service coordination visits via telecommunications or information technology.

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 there are no requirements to alter current business practices, and there are no new fees or costs imposed on those required to comply.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R061" in the subject line.

## STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

The amendments implement Texas Government Code §531.02161.

### §353.1502. Definitions.

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

(1) Assessments--Managed care organization (MCO) evaluation of a member's medical and functional service needs, including community-based long-term services and supports, behavioral health services, therapies (e.g., physical, occupational, speech), and nursing services. This includes the MCO's completion of program-specific instruments and forms.

(2) Audio-only--~~Synchronous interactive~~ [An interactive], two-way audio communication that uses only sound and that meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include face-to-face communication.

(3) Audio-visual--~~Synchronous interactive~~ [Interactive], two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audio-visual does not include audio-only or in-person communication.

(4) C.F.R.--Code of Federal Regulations.

(5) Change in condition--A significant change in a member's health, caregiver support, or functional status that will not normally resolve itself without further intervention and requires review of and revision to the member's current service plan or individual service plan.

(6) Community-based long-term services and supports (LTSS)--Services provided to a qualified member in the member's [their] home or another community-based setting necessary to allow the member to remain in the most integrated setting possible. Community-based LTSS includes Medicaid state plan services available to all members, as well as services available to members who qualify for the Home and Community Based Services (HCBS) Program or Medicaid 1915(c) waiver programs, including the STAR+PLUS Home and Community-Based Services (HCBS) Program and the Medically Dependent Children Program. Community-based LTSS is available to both HCBS -eligible and non-HCBS eligible members. Community-based LTSS in Medicaid managed care varies by program model.

(7) Community First Choice (CFC)--A Medicaid state plan benefit described in 1 TAC Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(8) Covered services--Unless a service or item is specifically excluded under the terms of the state plan, a federal waiver, a managed care services contract, or an amendment to any of these, the phrase "covered services" means all health care, long term services and supports, nonemergency medical transportation services, or dental services or items that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and the Texas Health and Human Services Commission, including:

(A) all services or items comprising "medical assistance" as defined in Human Resources Code §32.003; and

(B) all value-added services under such contract.

(9) Declared state of disaster--A State of Disaster declared by the governor in accordance with Texas Government Code §418.014.

(10) Face-to-face--In-person or audio-visual communication that meets the requirements of the Health Insurance Portability and Accountability Act. Face-to-face does not include audio-only communication.

(11) Functionally necessary covered services--Community-based long-term services and supports provided to assist members with activities of daily living based on a functional assessment of the member's activities of daily living and a determination of the amount of supplemental supports necessary for the member to remain independent or in the most integrated setting.

(12) Healthcare service plan--An individualized plan developed with and for a member with special healthcare needs in the

STAR Health program. The healthcare service plan includes the following:

- (A) the member's history;
- (B) a summary of current medical and social needs and concerns;
- (C) short and long-term needs and goals; and
- (D) a treatment plan to address the member's physical, psychological, and emotional healthcare problems and needs, including:

- (i) a list of required services;
- (ii) the frequency of each service;
- (iii) a description of who will provide each service; and
- (iv) for a member in the Early Childhood Intervention program, the individual family service plan.

(13) **HHSC**--The Texas Health and Human Services Commission or its designee. HHSC is the single state agency charged with administration and oversight of the Texas Medicaid program, including Medicaid managed care. HHSC's authority is established in Texas Government Code Chapter 531.

(14) **HIPAA**--Health Insurance Portability and Accountability Act. Collectively, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d et seq., and regulations adopted under that act, as modified by the Health Information Technology for Economic and Clinical Health Act (HITECH) (P.L. 111-105), and regulations adopted under that act at 45 CFR Parts 160 and 164.

(15) **Individual service plan (ISP)**--An individualized and person-centered plan in which a member enrolled in the STAR Kids, STAR Health or STAR+PLUS HCBS program operated by an MCO, with assistance as needed, identifies and documents the member's preferences, strengths, and health and wellness needs in order to develop short term objectives and action steps to ensure personal outcomes are achieved within the most integrated setting by using identified supports and services. The ISP is supported by the results of a member's program-specific assessment and must meet the requirements of 42 C.F.R. §441.301.

(16) **Information technology**--Includes text, email, fax, secure transmission of clinical information, and HIPAA-compliant telecommunication tools such as health plan websites where a member or the member's legally authorized representative can access the member's healthcare information, including service plans.

(17) **In-person (or in person)**--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(18) **Legally authorized representative (LAR)**--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may, depending on the circumstances, include a parent, guardian, or managing conservator of a minor, or the guardian of an adult, or a representative designated pursuant to 42 C.F.R. §435.923.

(19) **Managed care organization (MCO)**--An entity licensed and approved by the Texas Department of Insurance with which HHSC contracts to provide Medicaid services and that complies with Chapter 353 of this title (relating to Medicaid Managed Care).

(20) **Medical consentor**--The person who may consent to medical care for a member under Texas Family Code Chapter 266.

(21) **Medically Dependent Children Program (MDCP)**--A 1915(c) waiver program that provides community-based services to assist Medicaid beneficiaries under age 21 to live in the community and avoid institutionalization.

(22) **Medically necessary**--Has the meaning as defined in §353.2 of this chapter (relating to Definitions).

(23) **Medical Necessity Level of Care (MN/LOC)**--An assessment instrument used to determine medical necessity for a nursing facility as defined by 26 TAC §554.2601. An MN/LOC is required for STAR+PLUS HCBS Program and CFC eligibility.

(24) **Member**--A person who is eligible for benefits under Medicaid, is in a Medicaid eligibility category included in the Medicaid managed care program, and is enrolled in a Medicaid MCO.

(25) **Minimum data set (MDS)**--Has the meaning as defined in 26 TAC §554.101.

(26) **Nursing facility**--An entity that provides organized and structured nursing care and services, and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(27) **Nursing facility level of care**--The determination that the level of care required to adequately serve a member is at or above the level of care provided by a nursing facility.

(28) **Person-centered care**--An approach to care that focuses on members as individuals and supports caregivers working most closely with members [them]. It involves a continual process of listening, testing new approaches, and changing routines and organizational approaches in an effort to individualize and de-institutionalize the care environment.

(29) **Resident Assessment Instrument (RAI)**--Has the meaning as defined in 26 TAC §554.101.

(30) **Resource Utilization Group (RUG)**--A categorization method, consisting of multiple categories based on the minimum data set core elements in a resident assessment instrument, that is used to determine a recipient's service and care requirements for a nursing facility. A RUG determination is necessary for MDCP and the STAR+PLUS HCBS Program eligibility because these programs require a nursing facility level of care.

(31) **Service coordination**--A specialized care management service that is performed or arranged by the MCO to identify needs, including physical health, mental health services and long term support services, facilitate development of a service plan or individualized service plan to address those identified needs, and coordination of services among the member's primary care provider, specialty providers, and non-medical providers to ensure timely access to covered services, non-capitated services, and community services.

(32) **Service coordinator**--The person with primary responsibility for providing service coordination to Medicaid managed care members.

~~{(33) **Service management**--A clinical service performed by the STAR Health MCO for members with special health care needs and other members in the STAR Health program when appropriate to facilitate development of a healthcare service plan and coordination of clinical services among a member's primary care provider and specialty providers to ensure members have access to, and appropriately utilize, medically necessary covered services.}~~

~~[(34) Service manager--The person with primary responsibility for providing service management to STAR Health members.]~~

~~(33) [(35)] Service plan (SP)--An individualized and person-centered plan in which a member, with assistance as needed, identifies and documents the member's [his or her] preferences, strengths, and needs in order to develop short-term objectives and action steps to ensure personal outcomes are achieved within the most integrated setting by using identified supports and services. The service plan is supported by the results of the member's program-specific assessment. In STAR+PLUS, a service plan applies to members who are not enrolled in the STAR+PLUS HCBS Program.~~

~~(34) [(36)] STAR+PLUS Home and Community-Based Services (HCBS) Program--The program that provides person-centered care services that are delivered in the home or in a community setting, as authorized through a federal waiver under §1115 of the Social Security Act, to qualified Medicaid-eligible clients who are age 21 or older, as cost-effective alternatives to institutional care in nursing facilities.~~

~~(35) [(37)] Telecommunications--An exchange of information by electronic and electrical means.~~

~~(36) [(38)] Telephonic--Audio-only communication using a telephone. Telephonic communication does not include audio-visual communication.~~

~~(37) [(39)] Verbal consent--The spoken agreement of a member, a member's legally authorized representative, or a member's medical consentor.~~

~~§353.1504. Use of Telecommunications in Service Coordination [and Service Management].~~

(a) STAR+PLUS.

(1) Managed care organizations (MCOs) must ensure all level 1 and 2 members receive at least one in-person service coordination visit per year.

(2) An in-person assessment satisfies the annual in-person service coordination visit requirement for level 1 and 2 members.

(3) MCOs may offer level 1 and 2 members in STAR+PLUS a choice of audio-visual communication for service coordination in place of an in-person visit if no assessment is occurring.

(A) When an MCO conducts service coordination using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for service coordination that the member's services will be subject to the following:

(i) the [The] MCO must monitor services for fraud, waste, and abuse; [-]

(ii) the [The] MCO must determine whether additional social services or supports are needed; and [-]

(iii) the [The] MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) During a declared state of disaster, HHSC may issue direction to MCOs regarding whether service coordination required to be conducted using face-to-face communication may be conducted through audio-only communication.

(5) MCOs may offer level 3 members in STAR+PLUS a choice of in-person, audio-visual, or audio-only communication for service coordination.

(6) Nursing facility residents must have at least one in-person service coordination visit per year for service planning purposes.

(7) STAR+PLUS MCOs must conduct nursing facility discharge planning visits in-person, including when a member is transitioning to the STAR+PLUS HCBS Program. The in-person nursing facility discharge planning visit may satisfy the requirement for the in-person STAR+PLUS HCBS initial assessment when a nursing facility member is transitioning to the STAR+PLUS HCBS Program. The requirement to conduct the in-person STAR+PLUS HCBS initial assessment is satisfied during the in-person nursing facility discharge planning visit if the MCO:

(A) uses the member's valid Minimum Data Set (MDS) assessment to gather the information necessary to complete the STAR+PLUS HCBS individual service plan; or

(B) conducts a Medical Necessity and Level of Care assessment if the member does not have a valid MDS or in lieu of the member's valid MDS to gather the information necessary to complete the STAR+PLUS HCBS individual service plan.

(8) MCOs must provide service coordination in accordance with §353.609 of this chapter (relating to Service Coordination).

(b) STAR Kids.

(1) MCOs must ensure all members receive at least one in-person service coordination visit per year.

(2) An in-person assessment using the HHSC-developed STAR Kids assessment tool satisfies the annual in-person service coordination visit requirement.

(3) MCOs may offer STAR Kids members a choice of audio-visual communication for service coordination in place of in-person service coordination visits if no assessment is occurring.

(A) When an MCO conducts service coordination using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for service coordination that the member's services will be subject to the following:

(i) the [The] MCO must monitor services for fraud, waste, and abuse; [-]

(ii) the [The] MCO must determine whether additional social services or supports are needed; and [-]

(iii) the [The] MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) During a declared state of disaster, HHSC may issue direction to MCOs regarding whether service coordination required to be conducted using face-to-face communication may be conducted through audio-only communication.

(5) STAR Kids MCOs must provide service coordination in accordance with §353.1205 of this chapter (relating to Service Coordination).

(c) STAR Health.

(1) The MCO must ensure all members receive at least one in-person service coordination visit per year.

(2) [(4)] The MCO must ensure that the service coordinator [manager] for a Medically Dependent Children Program member continues to make required contacts with the member and the member's [their] medical consentor to ensure the member's needs are met.

(3) [(2)] The MCO may offer members or the member's [their] medical consentor a choice of using audio-visual or telephonic communication to conduct a service coordination [management] visit in place of conducting the visit in-person if an assessment is not conducted during the visit.

(A) When an MCO conducts service coordination [management] using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) The MCO must inform members who utilize audio-visual or telephonic communication for service coordination [management] that the member's services will be subject to the following:

(i) the [The] MCO must monitor services for fraud, waste, and abuse; [-]

(ii) the [The] MCO must determine whether additional social services or supports are needed; and [-]

(iii) the [The] MCO must ensure that verbal consent to use telecommunications is documented in writing.

(C) During a declared state of disaster, HHSC may issue direction to the MCO regarding whether service coordination required to be conducted using face-to-face communication may be conducted through audio-only communication.

§353.1506. *Additional Requirements for Assessments and Service Coordination [Management] in STAR Health.*

(a) Information technology, including HIPAA-compliant text or email, may supplement audio-visual or in-person assessments, but may not be used as the sole means of conducting an assessment or service coordination [management] visit.

(b) When a managed care organization (MCO) conducts an assessment or service coordination [management] visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product.

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service coordination [management] or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service coordination [management].

(f) Audio-visual may not be used if an initial or annual assessment for the Medically Dependent Children Program or functionally necessary covered services is being conducted, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or medical consentor what verbal consent means, and what the member or medical consentor is consenting to.

(1) The verbal consent for an audio-visual in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each audio-visual service coordination visit conducted in place of an in-person visit.

(i) When telephonic screenings or service coordination [management] visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service coordination [management] or assessment in person. Only when HHSC issues direction to MCOs during a declared state of disaster that service coordination [management] or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of the [a governor declared] disaster, may an MCO deny a member's request for in-person contact.

(k) MCOs may use [their] discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

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 December 3, 2024.

TRD-202405809

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 19, 2025

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



## CHAPTER 354. MEDICAID HEALTH SERVICES

### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

##### 1 TAC §354.1006

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §354.1006, concerning Prohibition of Provider Discrimination Based on Immigration Status.

## BACKGROUND AND PURPOSE

The proposal is necessary to implement Texas Government Code §531.02119, added by House Bill 44, 88th Legislature, Regular Session, 2023, which requires HHSC to adopt rules necessary to prohibit Medicaid and Children's Health Insurance Program (CHIP) providers from discriminating against Medicaid recipients or CHIP members by refusing to provide health care services based solely on immunization status.

Texas Government Code §531.02119 outlines the requirements for the prohibition of discrimination based on immunization status, exceptions to this prohibition, requires HHSC or its designee to withhold payment from providers that violate the requirements until HHSC finds the provider is in compliance, and requires HHSC to establish administrative and judicial reviews for providers who are alleged to be in violation.

## SECTION-BY-SECTION SUMMARY

Proposed new §354.1006 prohibits Medicaid provider discrimination of Medicaid recipients based solely on the recipient's vaccination status. Specifically, the proposed rule (1) contains the express prohibition of discrimination based on vaccination status dictated by Texas Government Code §531.02119; (2) outlines the types of requests Medicaid providers must accept for Medicaid recipients who are seeking to be exempt from a provider's vaccination requirement policy; (3) contains a list of providers exempt from these requirements; (4) outlines when HHSC will withhold payment from a provider found to be noncompliant and when HHSC may not withhold payment; and (5) establishes the right of a provider to seek administrative and judicial review of an HHSC decision to withhold payment.

## 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, there is potential for a decrease in costs to state government as a result of enforcing and administering the rule as proposed, since HHSC will not pay for any health care services provided by a Medicaid provider who refuses to provide health care services because of a recipient's refusal or failure to obtain a vaccination or immunization. HHSC is unable to determine the cost savings because it is unknown how many providers will not comply with the proposed rule and how many health care services will not be paid for by HHSC.

Trey Wood 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 local governments.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(6) the proposed rule will not expand, limit, or repeal existing regulations.

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule prohibits Medicaid providers from refusing health care services because a member refuses or fails to obtain a vaccination or immunization and provides a process for administrative and judicial review of an alleged violation of the provision. Although a provider may continue to refuse services, HHSC will not pay the provider for any healthcare services until the provider complies with the proposed rule.

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the 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 rules.

## PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the section is in effect the public benefit will be that Medicaid recipients may experience less discrimination by providers based on the recipient's vaccination status.

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 a Medicaid provider may choose to not provide services to a member based on vaccination status. The proposed rule provides a process for administrative and judicial review of an alleged violation of the provision, and the provider can still choose not to comply with the proposed rule. HHSC will not pay a provider for services only when HHSC determines the provider has violated the proposed rule.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

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

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



to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R058" in the subject line.

## STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.02119, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to prohibit a Medicaid provider from refusing to provide health care services to a Medicaid recipient based solely on the recipient's immunization status; Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The new section affects Texas Government Code §§531.02119, 531.0055, 531.033, and 531.021(a) and Human Resources Code §32.021.

### §354.1006. Prohibition of Provider Discrimination Based on Immunization Status.

(a) Pursuant to Texas Government Code §531.02119, a Medicaid provider may not refuse to provide health care services to a Medicaid recipient based solely on the recipient's refusal or failure to obtain a vaccine or immunization for a particular infectious or communicable disease.

(b) Notwithstanding subsection (a) of this section, a provider is not in violation of this section if the provider:

(1) adopts a policy requiring some or all the provider's patients, including patients who are Medicaid recipients to be vaccinated or immunized against a particular infection or communicable disease to receive health care services from the provider; and

(2) provides an exemption to the policy described in paragraph (1) of this subsection and accepts an oral or written request from the Medicaid recipient or legally authorized representative, as defined by Texas Health and Safety Code §241.151, for an exemption from each required vaccination or immunization based on:

(A) a reason of conscience, including a sincerely held religious belief, observance, or practice, that is incompatible with the administration of the vaccination or immunization; or

(B) a recognized medical condition for which the vaccination or immunization is contraindicated.

(c) This section does not apply to a provider who is a specialist in:

(1) oncology; or

(2) organ transplant services.

(d) HHSC or its designee withholds payments to any Medicaid participating provider only if HHSC determines the provider is in violation of this section.

(1) HHSC withholds payments for services to the provider until HHSC determines the provider corrected the circumstances resulting in the vendor hold.

(2) A provider has the right to appeal an HHSC vendor hold as provided by Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(3) If the final decision in the administrative review is adverse to the appellant, the appellant may obtain a judicial review by filing for review with a district court in Travis County not later than the 30th day after the date of the notice of the final decision as provided under Texas Government Code Chapter 2001.

(e) Subsection (d) of this section applies only to an individual provider. HHSC or its designee may not refuse to reimburse a provider who did not violate this section based on the provider's membership in a provider group or medical organization with an individual provider who violated this section.

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

Filed with the Office of the Secretary of State on December 3, 2024.

TRD-202405800

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 19, 2025

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



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

##### 16 TAC §§87.1, 87.10, 87.71, 87.72, 87.78, 87.81

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 87, §§87.1, 87.10, 87.71, 87.72, and 87.78, and a new rule at §87.81 regarding the Used Automotive Parts Recyclers program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 87, implement Texas Occupations, Chapter 2309, Used Automotive Parts Recyclers.

The proposed rules implement Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), the Deputy Darren Almendarez Act, which addresses the issue of catalytic converter theft. Section 5.01 of the Act provides for the coordination of efforts between the Department and other state agencies, including the Motor Vehicle Crime Prevention Authority, the Department of Motor Vehicles, and the Department of Public Safety, in order for the respective agencies to effectively review records involving the purchase, acquisition, sale, or transfer of catalytic converters removed from motor vehicles and to respond to suspicious activities that may be detected through the analysis of these records.

Section 3.12 of the Act amends Occupations Code, Chapter 2305, Records of Certain Vehicle Repairs, Sales, and Pur-

chases, by enacting new subchapter D, pertaining to records of sales or transfers of catalytic converters removed from vehicles. Occupations Code §2305.152 clarifies that the subchapter is applicable to used automotive parts recyclers (UAPRs). Section 2305.153 requires UAPRs to maintain accurate transaction records of the transaction for a period of two years. Under §2305.153(b), the record must contain a description made in accordance with the custom of the trade for the volume of catalytic converters sold or transferred, the name of the person to whom the catalytic converters were sold or transferred, and the date of the transaction. Section 2305.155 grants the Department authority to enter a licensee's premises for purpose of examining the records. The proposed rules implement these provisions by requiring UAPRs to maintain these records and furnish them to the Department for inspection upon request. The proposed rules additionally incorporate by reference the two-year records retention period required by SB 224.

The proposed rules additionally make changes in response to concerns raised during the Department's four-year rule review process under Government Code §2001.039. These changes include insertion of a reference to a newly adopted statute, Transportation Code §551A.001, which pertains to definitions related to off-highway vehicles, and the removal of an obsolete reference to §502.001. These changes also include additional amendments to clarify the duty to produce records for inspection, the record retention requirements for different types of records, and that both license plates and registration insignia must be removed. Lastly, the proposed rules make other clarifying changes, including the addition of language concerning the applicability of the rules and the statutes implemented by the rules.

#### *Advisory Board Recommendations*

The proposed rules were presented to and discussed by the Used Automotive Parts Recyclers Advisory Board at its meeting on August 22, 2024. The Advisory Board referred the proposed rules to a work group for further development. On October 1, 2024, the work group met and recommended changes, including the insertion of references to Subchapter D of Occupations Code Chapter 2305 where relevant, the removal of a change to §87.10 that would have defined catalytic converters as a used automotive part, the removal of a change to §87.20 that would have clarified which persons were required to have a license, a change in a required record retention period in §87.71(b), the addition of clarifying language to §87.78 concerning the destruction of license plates, and the removal of tagging, inventorying, and certain identification and recordkeeping requirements from new §87.81 concerning catalytic converter theft prevention. The proposed rules, with the changes recommended by the work group, were presented to the Advisory Board at its November 20, 2024 meeting. The Advisory Board made the following changes to the proposed rules: the Advisory Board disregarded the work group's recommended change to the record retention period in §87.71(b). The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §87.1, Authority. The proposed rules modify the rule heading to "Authority and Applicability." The rule is divided into two subsections, with the current substantive text stated in subsection (a) and new language inserted in the last sentence of subsection (a) and in subsection (b). The language inserted in subsection (a) clarifies that specific rule provisions

implement Occupations Code, Chapter 2305, Transportation Code, Chapter 501, and other applicable statutes. The language consisting of subsection (b) clarifies that rules under 16 TAC Chapter 60, Procedural Rules of the Commission and the Department, are also applicable to the UAPR program.

The proposed rules amend §87.10, Definitions. References to Transportation Code §551A.001 are added to the introductory paragraph and to subparagraph (9)(D), and an obsolete reference to Transportation Code §502.001 is deleted from subparagraph (9)(D).

The proposed rules amend §87.71, Responsibilities of the Licensee--Record Retention. The heading is modified by adding the phrase "and Production" to reflect the expanded scope of the rule. The language of subsection (b) is modified to reflect that licensees generally must maintain records for three years unless a shorter period is specified elsewhere in the rules chapter. New subsection (c) is inserted with language reflecting a general one-year retention period for records of purchase or receipt of component parts, and a sentence clarifying that this provision does not apply to the receipt of catalytic converters. New subsection (d) is inserted, with language stating that the records retention requirements for catalytic converter transactions are as specified in new rule §87.81. New subsection (e) is inserted, with language setting forth a licensee's duty to produce records to a Department representative on request.

The proposed rules amend §87.72. The heading is modified by adding the phrase "Contact Information and" to reflect the expanded scope of the rule. New subsection (a) is inserted, with language requiring a licensee to notify the department within 30 days following any change in contact information. Existing subsections (a) and (b) are re-lettered as (b) and (c), respectively.

The proposed rules amend §87.78. The heading is modified by the insertion and removal of language to reflect the new scope of the rule. New subsection (a) is inserted, with language reflecting that licensees must remove both the license plates and registration insignia from the vehicles and must securely store the license plates until the plates are destroyed. Existing subsections (a) and (b) are re-lettered as (b) and (c), respectively.

The proposed rules add new §87.81, Responsibilities of the Licensee--Catalytic Converter Theft Prevention. The rule contains three subsections, (a) through (c). Subsection (a) sets forth the requirement to create and maintain accurate records of catalytic converter sales and transfers. Subsection (b) provides that the records must include the name of the purchaser or transferee, a description of the quantity of catalytic converters, and the date of the transaction. Subsection (c) sets forth a two-year retention period for these records and a requirement to produce the records, and any removed catalytic converters, for inspection when directed to do so.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

## PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be increased transparency in catalytic converter transactions, which will hamper the sale of stolen catalytic converters, reducing the incentive for theft.

## PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

## FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

## ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules create new regulations. The proposed rules require licensees to update their contact information, to remove of registration insignia from vehicles, and to keep and produce certain records.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand existing recordkeeping requirements.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

## TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

## PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

## STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2309, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 2305, and 2309. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 224, 88th Legislature, Regular Session (2023).

### *§87.1. Authority and Applicability.*

(a) This chapter is promulgated under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2309. Specific provisions within this chapter also implement the statutory requirements under Texas Occupations Code, Chapter 2305, Subchapter D, Texas Transportation Code, Chapter 501, and other applicable statutes.

(b) In addition to this chapter, the rules under 16 TAC Chapter 60, Procedural Rules of the Commission and the Department, are applicable to the Used Automotive Parts Recyclers program.

### *§87.10. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, or the words or terms conflict with a definition in the Transportation Code, §501.002, [ø] §501.091, §551A.001, or Occupations Code, Chapter 2309.

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

(9) Motor vehicle--

(A) any motor driven or propelled vehicle required to be registered under the laws of this state;

(B) a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds;

(C) a travel trailer;

(D) an all-terrain vehicle or a recreational off-highway vehicle, as defined by Transportation Code, §551A.001, [~~§502.001,~~] designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or

(E) a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state.

(10) - (15) (No change.)

§87.71. Responsibilities of the Licensee--Record Retention and Production.

(a) A used automotive parts recycler shall maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

(b) Unless a shorter period of retention is specified [required] by another section of this chapter, a used automotive parts recycler shall maintain records required by this chapter for a period of three years from the date of the event reflected in the record.

(c) In accordance with Occupations Code §2309.356, records of purchase or receipt of component parts must be maintained by the used automotive parts recycler for a period of one year from the date of the event reflected in the record. This provision does not apply to the receipt of catalytic converters.

(d) Records pertaining to catalytic converter transactions must be retained by the used automotive parts recycler as specified in 16 TAC §87.81.

(e) Upon request by an investigator or other representative of the department, a used automotive parts recycler must produce for examination and copying any records required by this chapter, Occupations Code, Chapter 2305 or 2309, Transportation Code, Chapter 501, or other law.

§87.72. Responsibilities of the Licensee--Contact Information and Registration of New Business Location.

(a) A used automotive parts recycler must notify the department within thirty (30) days following any change of mailing address, phone number, or email address from the contact information provided on the latest license or renewal application.

(b) [(a)] Before moving a place of business, a used automotive parts recycler must notify the department of the new location.

(c) [(b)] The used automotive parts recycler shall provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

§87.78. Responsibilities of the Licensee--Removal of License Plates and Registration Insignias and Surrender of Certain Documents [or License Plates].

(a) Upon receipt of a vehicle, a used automotive parts recycler must remove any license plates and registration insignias. The used automotive parts recycler must securely store any license plates until destroyed in accordance with Occupations Code §2309.352.

(b) [(a)] A used automotive parts recycler shall surrender to the Texas Department of Motor Vehicles (DMV) for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by the DMV.

(c) [(b)] For each vehicle for which a document is surrendered in compliance with subsection (b) [(a)], the licensee shall obtain a signed receipt for a surrendered certificate of title.

§87.81. Responsibilities of the Licensee--Catalytic Converter Theft Prevention.

(a) Upon sale or transfer of a catalytic converter, a used automotive parts recycler must create a transaction record as provided in

this rule and ensure the accuracy of the information provided in this record.

(b) The transaction record must contain the name of the person to whom the catalytic converter is sold or transferred, a description of the quantity of the catalytic converters sold, and the date of the transaction.

(c) The used automotive parts recycler must maintain the transaction record required by this rule until no earlier than two years from the date of the transaction. The used automotive parts recycler must, upon request by an investigator or other representative of the department, produce for examination any removed catalytic converters in its possession and the records required by this rule.

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 December 9, 2024.

TRD-202405923

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 19, 2025

For further information, please call: (512) 463-7750

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS**

The State Board of Education (SBOE) proposes new §§67.27, 67.29, 67.31, 67.33, 67.39, 67.41, 67.61, and 67.63, concerning state review and approval of instructional materials. The proposed new sections would implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by defining the procedures and policies for the selection, appointment, training, and duties of instructional materials review and approval (IMRA) reviewers; outlining the procedures for IMRA public access and public comment; and specifying procedures for materials to be updated or revised following approval by the board. The proposed new sections would also outline the procedures for local districts to adopt instructional materials.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

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

At the June 2024 meeting, the SBOE approved 19 TAC Chapter 67, State Review and Approval of Instructional Materials, Subchapter B, State Review and Approval, §67.43, Lists of Approved and Rejected Instructional Materials, for second reading and final adoption.

The proposed new sections in Subchapter B would define the procedures and policies for the selection, appointment, training, and duties of IMRA reviewers; outline the procedures for IMRA public access and public comment; and specify procedures for materials to be updated or revised following approval by the board.

The proposed new sections in Subchapter C would outline the procedures for local districts to request sample copies of materials under review and clarify the procedures for selection and local adoption of instructional materials by school districts and open-enrollment charter schools.

The SBOE approved the proposed new sections for first reading and filing authorization at its November 22, 2024 meeting.

**FISCAL IMPACT:** Todd Davis, associate commissioner for instructional strategy, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

**COST INCREASE TO REGULATED PERSONS:** The proposal may impose a cost on regulated persons. Publishers of SBOE-approved materials assume all costs associated with receiving approval from the SBOE and making updates and/or substitutions to their approved materials. This is not mandatory unless a participant in the review and approval process opts to submit their materials voluntarily. Further, the SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to content in state-adopted instructional materials prior to delivery of the materials to school districts. However, these rules are necessary to implement legislation and, therefore, are not subject to Texas Government Code, §2001.0045.

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations regarding the procedures and policies for the selection, appointment, training, and duties of IMRA reviewers; outline the procedures for IMRA public access and public comment; and specify procedures for materials to be updated or revised following approval by the board.

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. Davis has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be defining the procedures and policies for the selection, appointment, training, and duties of IMRA reviewers; outlining the procedures for IMRA public access and public comment; and specifying procedures for materials to be updated or revised following approval by the board. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 20, 2024, and ends at 5:00 p.m. on January 21, 2025. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2025 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 20, 2024.

## **SUBCHAPTER B. STATE REVIEW AND APPROVAL**

### **19 TAC §§67.27, 67.29, 67.31, 67.33, 67.39, 67.41**

**STATUTORY AUTHORITY.** The new sections are proposed under Texas Education Code (TEC), §31.003(a), which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; and TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review

under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.003(a); and §31.022 and §31.023, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

§67.27. IMRA Reviewers: Eligibility and Appointment.

(a) All instructional materials review and approval (IMRA) reviewers must complete an application. The application will include a resume and supervisor contact information and must request any professional associations, affiliations, and groups in a format approved by the State Board of Education (SBOE) chair.

(b) The IMRA reviewer application shall be posted to the SBOE website.

(c) An IMRA reviewer may serve as a quality reviewer or as a suitability reviewer.

(d) IMRA quality reviewers must meet one of the following minimum qualification requirements:

(1) educators with three or more years of experience;

(2) district or campus personnel who have taught and/or directly supported the grade level(s) and subject area(s) or course(s) for at least three years;

(3) adjunct professors at an accredited institution of higher education in Texas for at least three years; or

(4) persons with evidence of strong content knowledge and experience in the grade level(s) and subject area(s) or course(s).

(e) The Texas Education Agency (TEA) may reject a quality reviewer applicant if the candidate does not meet minimum eligibility as outlined in this section.

(f) All eligible quality reviewer applicants shall be evaluated by TEA staff using the applicants' experience and qualifications rated on a scale of 1-3. The best qualified individuals are ranked 1.

(g) Once rated, all eligible quality reviewer applicants are shared with the SBOE member for which the applicant is a district resident.

(h) TEA staff provides all quality reviewer applicants and their applications to the SBOE member for which the applicant is a district resident, and the SBOE member may adjust rankings, veto applicants, and/or identify top candidates.

(i) The SBOE member has two weeks to return applicants and their rankings to TEA staff. If the SBOE member does not submit a response, TEA staff's ranking shall remain unchanged.

(j) IMRA quality reviewers must be approved by the SBOE member for which they are a district resident.

(k) If an individual invited to serve on a quality review panel declines the invitation, the relevant SBOE member will select an alternate from the list of candidates within one week. To the extent an SBOE member fails to select an alternate within one week, the top-ranked applicant is deemed selected.

(l) In the event TEA does not receive enough applications to fill available roles, TEA may:

(1) reduce the size of the review team to no fewer than three reviewers;

(2) postpone the review of materials using the SBOE-approved strategy for prioritizing selection of instructional materials for review; or

(3) modify the review schedule to allow for additional recruitment efforts.

(m) TEA staff shall build quality review panels using top candidates identified from each SBOE district. As final selections are made, TEA may consider the following characteristics to ensure that each individual review panel is balanced and has the necessary qualifications. The guidelines are established to ensure that the work groups are highly qualified, reflect the make-up of the state's educators, and include representation from the following.

(1) Experience: highly qualified educators and others with evidence of strong content knowledge and experience in the subject and/or grade level or bands and/or course(s).

(2) Position: a variety of positions reflected such as classroom teachers, campus- and district-level administrators/specialists, education service center subject area personnel, representatives from higher education, and community members, including parents and employers.

(3) School district size: large, midsize, and small school districts.

(4) Demographics: multiple and different racial and ethnic groups and males and females.

(5) School district/charter school: a variety of local education agencies are represented, including open-enrollment charter schools.

(6) Expertise: if a work group is assigned a grade band, at least one reviewer with experience teaching for each grade level will be prioritized.

(n) TEA staff shall maintain a database of individuals who have served on an IMRA review panel during the review process.

(o) Applicants are exempt from subsection (a) of this section if they have previously served as an IMRA quality reviewer and received an acceptable performance rating.

(p) Texas residency is a minimum requirement for any IMRA suitability reviewer.

(q) Each SBOE member shall annually nominate a minimum of 20 applicants to serve as suitability reviewers and rank them from most preferred to least preferred.

(r) A panel for suitability review consists of three reviewers and shall reflect the political affiliation of the SBOE. No more than one suitability reviewer per panel may be from any one SBOE district.

(s) TEA staff shall build suitability review panels using top candidates identified from each SBOE district. As final selections are made, TEA may consider the following characteristics to ensure that each individual review panel is balanced and has the necessary qualifications.

(1) Experience: successful participation as a quality or suitability reviewer in a past review.

(2) Demographics: multiple and different racial and ethnic groups and males and females.

(t) If an individual invited to serve on a review panel declines the invitation, the relevant SBOE member will select an alternate from the list of candidates within one week. To the extent a member fails to

select an alternate within one week, the top-ranked applicant is deemed selected.

(u) If there are not enough suitability reviewers available for a review cycle, TEA shall request more nominations from each SBOE member. To the extent a member fails to nominate additional candidates within one week, candidates from other SBOE member districts may be considered.

(v) If an SBOE member who nominated reviewers no longer holds the office before the start of the annual review, the new SBOE member may nominate different suitability reviewers or adjust their rankings. If the office is vacant, the SBOE chair may nominate different suitability reviewers or adjust their rankings.

§67.29. IMRA Reviewers: Training, Duties, and Conduct.

(a) Instructional materials review and approval (IMRA) reviewers shall participate in training that includes at least the following:

- (1) the responsibilities of an IMRA reviewer;
- (2) statutes and rules pertaining to the IMRA process;
- (3) essential knowledge and skills specified for subjects and grades or courses included in the proclamation or request for instructional materials, including clear and consistent guidelines for determining Texas Essential Knowledge and Skills (TEKS), Texas Prekindergarten Guidelines (TPG), or English Language Proficiency Standards coverage within the instructional materials;
- (4) identifying factual errors;
- (5) the schedule of IMRA procedures;
- (6) regulatory requirements, including Texas Government Code, §572.051 (relating to Standards of Conduct), and Texas Penal Code, §36.02 (relating to Bribery); and
- (7) IMRA quality and suitability rubrics.

(b) IMRA reviewers shall not accept meals, entertainment, gifts, or gratuities in any form from State Board of Education (SBOE) members; publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) IMRA reviewers shall be afforded the opportunity to collaborate with other panel members during the official virtual and face-to-face reviews to discuss coverage of TEKS or TPG, errors, components, or any other aspect of instructional materials being evaluated. Reviewers shall not discuss with other reviewers of the panel the instructional materials being reviewed, except during official virtual and face-to-face reviews.

(d) IMRA reviewers shall not discuss instructional materials being evaluated with a member of the SBOE, unions, organizations, or associations or with any party having a financial interest in the approval of instructional materials prior to the conclusion of the review. The review is considered to have concluded on the date that the final list of instructional materials recommended for approval is posted on the SBOE website.

(e) SBOE members may attend review panel meetings but may not discuss materials under review with state review panel members.

(f) IMRA reviewers shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end when they are released from their duties. During this period, IMRA reviewers shall not have direct

or indirect communication with any person having an interest in the approval process regarding content of instructional materials under evaluation by the panel.

(g) The restrictions in subsections (c)-(f) of this section are not intended to prohibit IMRA reviewers from providing public testimony to the SBOE either at a public hearing or in any regularly scheduled meeting in accordance with the SBOE Operating Rules, §2.12 (relating to Public Hearings).

(h) IMRA reviewers shall report immediately to the commissioner of education and chair of the SBOE any communication or attempted communication by any person not officially involved in the review process regarding instructional materials being evaluated by the panel.

§67.31. Procedures for Public Access to and Handling of IMRA Samples.

(a) Each regional education service center (ESC) executive director shall designate one person to supervise all access to pre-approval instructional materials under consideration.

(b) On or before the date specified in the request for instructional materials for review, each ESC representative shall notify the commissioner of education of all irregularities in electronic samples in a manner designated by the commissioner. The appropriate publisher shall be notified of any sample irregularities reported by the ESCs.

(c) One electronic sample of all pre-approval instructional materials under consideration shall be retained in each ESC for review by interested persons. The review sample must remain available until the ESC receives the electronic final approved product sample on the date specified in the schedule of instructional materials review and approval (IMRA) procedures.

(d) Appropriate information, such as locator and login information and passwords, shall be made available by the ESCs to ensure public access to Internet-based instructional content throughout the review or contract period, as appropriate.

(e) Regional ESCs shall ensure reasonable public access to pre-approval instructional materials under consideration, including access outside of normal working hours that shall be scheduled by appointment.

(f) On or before the date specified in the schedule of IMRA procedures, each ESC shall publicize the date on which pre-approval instructional materials under consideration will be available for review and shall notify all school districts in the region of the schedule.

(g) One electronic final sample of all instructional materials approved by the State Board of Education shall be retained in each ESC for the entire contract period for review by interested persons. Samples of approved prekindergarten materials must match the format of the products to be provided to schools upon ordering.

§67.33. Public Comment on Instructional Materials.

(a) The instructional materials public comment period begins when the electronic samples of materials under consideration for approval are posted on the State Board of Education (SBOE) website and ends after 60 calendar days.

(b) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for review. All feedback shall be submitted to the commissioner of education in a format designated by the commissioner on or before the deadlines specified in the schedule of instructional materials review and approval (IMRA) procedures.

(c) Copies of written feedback and lists of reported alleged factual errors and suitability flags shall be posted on the SBOE website and provided to the SBOE and participating publishers.

(d) The SBOE shall hold a hearing on instructional materials submitted for review during a regularly scheduled meeting prior to the meeting at which the SBOE will vote to approve instructional materials.

(1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents.

(2) Copies of written testimony provided at the hearing shall be distributed to SBOE members and to publishers with materials under consideration.

(3) Persons who wish to testify must register in accordance with registration procedures in the SBOE Operating Rules, §2.10 (relating to Oral Public Testimony in Connection with Regular Board and Committee Meetings).

(4) The SBOE may limit the time available for each person to testify to hear from everyone who has registered to testify.

(5) Persons may also be allowed to register to testify at the hearing, but priority will be given to those persons who registered prior to the deadline, in accordance with the SBOE Operating Rules, §2.12 (relating to Public Hearings).

(6) Oral responses to testimony at the hearing may be made by official representatives of publishing companies.

(7) An archived recording of the hearing shall be provided on the Texas Education Agency (TEA) website.

(8) All written publisher responses to comments or public testimony provided at the hearing shall be posted to the TEA website within five working days of their receipt from the publisher.

(e) Public comment on instructional materials not approved by the SBOE on the date specified in the schedule of IMRA procedures shall be accepted according to the SBOE Operating Rules, §2.10.

§67.39. Updates to Approved Instructional Materials.

(a) A publisher may submit a request to the commissioner of education for approval to update content in State Board of Education (SBOE)-approved instructional materials. A publisher requesting approval of a content update shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the update. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. The request must be accompanied by an electronic sample of the proposed updates. Proposed changes shall be posted on the Texas Education Agency (TEA) website for a minimum of 30 calendar days prior to approval.

(b) A publisher that requests to update content in state-approved instructional materials must comply with the following additional requirements:

(1) provide that there will be no additional cost to the state or local education agencies (LEAs);

(2) certify in writing that the new material meets the applicable essential knowledge and skills, is free from factual errors, and is suitable and appropriate for the grade level and subject/course(s); and

(3) certify that the updates do not affect the product's coverage of Texas Education Code, §28.002(h), as it relates to that specific subject and grade level or course(s) in understanding the importance of patriotism and functioning productively in a free-enterprise society

with appreciation for the basic democratic values of our state and national heritage.

(c) All requests for updates must be approved by the SBOE prior to their introduction into state-approved and locally adopted instructional materials.

(d) The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to content in state-approved instructional materials prior to delivery of the materials to school districts.

(e) A publisher of instructional materials may provide alternative formats for use by school districts if:

(1) the content is identical to SBOE-approved content; and

(2) the alternative formats include the identical revisions and updates as the original product and the cost to the state and LEAs is equal to or less than the cost of the original product.

(f) Alternative formats may be developed and introduced at any time during the instructional materials review and approval cycle using the procedures for approval of other SBOE-approved materials.

(g) Publishers must notify the commissioner in writing if they are providing SBOE-approved products in alternative formats.

§67.41. New Editions of Approved Instructional Materials.

(a) A publisher may submit a request to the commissioner of education for approval to substitute a new edition of state-approved instructional materials. A publisher requesting approval of a new edition shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the substitution. The request must be accompanied by an electronic sample and a correlation document that meets all the requirements of the correlation document provided for the initial review. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be made available for public review on the Texas Education Agency website for a minimum of 60 calendar days prior to approval.

(b) A publisher that requests to substitute a new edition of state-approved instructional materials must comply with the following additional requirements:

(1) provide that there will be no additional cost to the state or local education agencies;

(2) certify in writing that the new material meets the applicable Texas Essential Knowledge and Skills or Texas Prekindergarten Guidelines, is free from factual errors, and is suitable and appropriate for the grade level and subject/course(s); and

(3) certify that the updates in the new edition do not affect the product's coverage of Texas Education Code, §28.002(h), as it relates to that specific subject and grade level or course(s) in understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage.

(c) All requests for updates involving content used in determining the product's eligibility for approval must be approved by the State Board of Education (SBOE) prior to their introduction into state-approved and locally adopted instructional materials.

(d) The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to content in SBOE-approved instructional materials prior to delivery of the materials to school districts.



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

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## SUBCHAPTER C. LOCAL OPERATIONS

### 19 TAC §67.61, §67.63

**STATUTORY AUTHORITY.** The new sections are proposed under Texas Education Code (TEC), §31.003(a), which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; and TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §31.003(a); and §31.022 and §31.023, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

*§67.61. Sample Copies of Instructional Materials for School Districts.*

(a) Upon request by the instructional materials coordinator of a school district or an open-enrollment charter school, a publisher shall provide one complete electronic sample in an open file format or closed format of approved instructional materials. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstration or representative format. Samples of instructional materials provided to school districts shall be labeled "Sample Copy - Not for Classroom Use."

(b) Samples supplied to school districts shall be provided and distributed at the expense of the publisher. No state or local funds shall be expended to purchase, distribute, or ship sample materials. Publishers may make arrangements with school districts or open-enrollment charter schools to retrieve samples after local selections are completed, but the state does not guarantee return of sample instructional materials.

*§67.63. Selection and Local Adoption of Instructional Materials by School Districts.*

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall select instructional materials in an open meeting as required by Texas Government Code, Chapter 551, including public notice.

(b) A school district or an open-enrollment charter school may requisition instructional materials on the list approved under the Texas Education Code, §31.023, for grades above the grade level in which the student is enrolled.

(c) Locally adopted instructional materials shall be supplied to a student in special education classes as appropriate to the level of the student's ability and without regard to the grade for which the instructional material is adopted or the grade in which the student is enrolled.

(d) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of instructional materials.

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 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER A. REQUIRED CURRICULUM

#### 19 TAC §74.3

The State Board of Education (SBOE) proposes an amendment to §74.3, concerning the required secondary curriculum. The proposed amendment would update the list of high school courses for science that are required to be offered to students.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. In late 2019, the SBOE began the process to review and revise the Texas Essential Knowledge and Skills (TEKS) for Kindergarten-Grade 12 science. In November 2020, the SBOE approved for second reading and final adoption revised TEKS for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry. At the June 2021 SBOE meeting, the board approved for second reading and final adoption new TEKS for Specialized Topics in Science and revised standards for Aquatic Science, Astronomy, Earth Science Systems (formerly titled Earth and Space Science), and Environmental Systems. The updated TEKS for high school science are being implemented beginning with the 2024-2025 school year.

Additionally, career and technical education (CTE) TEKS Review work groups were convened from March-July 2021 to develop recommendations for certain CTE courses that satisfy a science graduation requirement. Proposed new TEKS for certain CTE courses that may satisfy science graduation requirements were approved for second reading and final adoption by the SBOE at the April 2024 SBOE meeting.

The proposed amendment would align the required secondary curriculum in §74.3(b)(2)(C) with the updates to the secondary science course offerings made during recent TEKS revisions.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 22, 2024 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by updating the list of high school courses for science that are required to be offered to students.

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 limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring the course titles in the required curriculum align with titles in the TEKS and would add additional course options to students to support relevant and meaningful curriculum. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 20, 2024, and ends at 5:00 p.m. on January 21, 2025. The SBOE will take registered oral and written

comments on the proposal at the appropriate committee meeting in January 2025 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 20, 2024.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.025(b-1), which requires the SBOE to determine by rule specific courses for graduation under the foundation high school program.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(4), 28.002(a), and 28.025(b-1).

§74.3. *Description of a Required Secondary Curriculum.*

(a) (No change.)

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title. The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV and at least one additional advanced English course;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--Integrated Physics and Chemistry, Biology, Chemistry, Physics, and at least two additional science courses selected from Aquatic Science, Astronomy, Earth Systems Science [Earth and Space Science], Environmental Systems, Advanced Animal Science, [Advanced Biotechnology,] Advanced Plant and Soil Science, Anatomy and Physiology, Physics for Engineering, Biotechnology I, Biotechnology II, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, Scientific Research and Design, [and] Engineering Science, Advanced Placement (AP) Biology, AP Chemistry, AP Physics 1: Algebra Based, AP Physics 2: Algebra Based, AP Environmental Science, AP Physics C: Electricity and Magnetism, and AP Physics C: Mechanics. The requirement to offer two additional courses may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies--United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, Personal Financial Literacy, Economics with Emphasis on the Free Enterprise System and Its Benefits, and Personal Financial Literacy and Economics. The requirement to offer both Economics

with Emphasis on the Free Enterprise System and Its Benefits and Personal Financial Literacy and Economics may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students;

(E) physical education--at least two courses selected from Lifetime Fitness and Wellness Pursuits, Lifetime Recreation and Outdoor Pursuits, or Skill-Based Lifetime Activities;

(F) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(G) career and technical education-- three or more career and technical education courses for four or more credits with at least one advanced course aligned with a specified number of Texas Education Agency-designated programs of study determined by enrollment as follows:

(i) one program of study for a district with fewer than 500 students enrolled in high school;

(ii) two programs of study for a district with 501-1,000 students enrolled in high school;

(iii) three programs of study for a district with 1,001-2,000 students enrolled in high school;

(iv) four programs of study for a district with 1,001-5,000 students enrolled in high school;

(v) five programs of study for a district with 5,001-10,000 students enrolled in high school; and

(vi) six programs of study for a district with more than 10,000 students enrolled in high school.

(H) languages other than English--Levels I, II, and III or higher of the same language;

(I) computer science--one course selected from Fundamentals of Computer Science, Computer Science I, or AP [Advanced Placement (AP)] Computer Science Principles; and

(J) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. A school district must teach a course that is specifically required for high school graduation at least once in any two consecutive school years. For a subject that has an end-of-course assessment, the district must either teach the course every year or employ options described in Subchapter C of this chapter (relating to Other Provisions) to enable students to earn credit for the course and must maintain evidence that it is employing those options.

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

(c) (No change.)

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

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

The State Board of Education (SBOE) proposes new §§127.59, 127.61, 127.262, 127.263, 127.510, 127.511, 127.569, 127.571, 127.604, 127.689 - 127.691, 127.695 - 127.699, and 127.773, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed new sections would add TEKS for state-approved innovative courses in the following CTE career clusters: agriculture, food, and natural resources; business, marketing, and finance; health science; hospitality and tourism; information technology; and law and public service.

**BACKGROUND INFORMATION AND JUSTIFICATION:** After the board adopted new rules concerning graduation requirements, the previously approved experimental courses were phased out as of August 31, 1998. Since the adoption of the TEKS, school districts and other entities have submitted requests for approval of innovative courses that do not have TEKS and meet a demonstrated student need.

In 2023, CTE advisory committees were convened to make recommendations for the review and refresh of programs of study as required by the Texas Perkins State Plan. Finalized programs of study were published in the fall of 2023 with an implementation date beginning in the 2024-2025 school year. CTE courses to be developed or revised to complete or update programs of study were determined.

At the April 2024 meeting, the SBOE approved new TEKS for 23 courses in the agribusiness, animal science, plant science, and aviation maintenance programs of study as well as two STEM courses that may satisfy science graduation requirements: Physics for Engineers and Scientific Research and Design. Additionally, Texas Education Agency (TEA) staff shared an overview of upcoming interrelated needs for TEKS review and revision and instructional materials review and approval (IMRA). Staff explained upcoming needs related to development and amendment of CTE courses, made recommendations for completing the work in batches, and recommended including CTE in the next three cycles of IMRA. In 2024, the SBOE began the review of current CTE TEKS, the development of new CTE TEKS, and the review of innovative courses to be approved as TEKS for courses in the new engineering program of study. At the June 2024 meeting, the SBOE approved recommendations that TEA present certain innovative courses with minor edits

for consideration for adoption as TEKS-based courses. A discussion item was presented to the Committee of the Full Board at the September 2024 SBOE meeting regarding proposed new TEKS for courses in the following CTE career clusters: agriculture, food, and natural resources; business, marketing, and finance; health science; hospitality and tourism; information technology; and law and public service.

The proposed new sections would ensure the standards for CTE programs of study remain current and support relevant and meaningful programs of study.

The SBOE approved the proposed new sections for first reading and filing authorization at its November 22, 2024 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect (2025-2029), there are no additional costs to the state. There may be fiscal implications for school districts and open-enrollment charter schools to implement the proposed new TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations by proposing new CTE TEKS required to be taught by school districts and open-enrollment charter schools offering the courses. The proposal would ensure the standards for agriculture, food, and natural resources; business, marketing, and finance; health science; hospitality and tourism; information technology; and law and public service remain current and support relevant and meaningful programs of study. Additionally, the proposal to change these CTE courses from state-approved innovative courses to TEKS-based courses would better align the TEKS and add additional course options for students.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the

number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be better alignment of the TEKS to support relevant and meaningful programs of study. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 20, 2024, and ends at 5:00 p.m. on January 21, 2025. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2025 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 20, 2024.

## SUBCHAPTER C. AGRICULTURE, FOOD, AND NATURAL RESOURCES

### 19 TAC §127.59, §127.61

**STATUTORY AUTHORITY.** The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which permits the SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to adopt rules to ensure that a student may comply with the curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

*§127.59. Geographic Information Systems for Agriculture (One Credit), Adopted 2025.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Principles of Agriculture, Food, and Natural Resources. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Agriculture, Food, and Natural Resources career cluster focuses on the essential elements of life, food, water, land, and air. This career cluster includes occupations ranging from farmer, rancher, and veterinarian to geologist, land conservationist, and florist.

(3) Geographic Information Systems for Agriculture is a course designed to provide students with the academic and technical knowledge and skills that are required to pursue a career as a precision agriculture specialist, a crop specialist, an independent crop consultant, a nutrient management specialist, a physical scientist, a precision agronomist, a precision farming coordinator, a research agricultural engineer, or a soil fertility specialist. Students will learn to use computers to develop or analyze maps of remote sensing to compare physical topography with data on soils, fertilizer, pests, or weather.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) identify career and entrepreneurship opportunities for a chosen occupation in the field of agriculture and develop a plan for obtaining the education, training, and certifications required for the chosen occupation;

(B) model professionalism by continuously exhibiting appropriate work habits, solving problems, taking initiative, communicating effectively, listening actively, and thinking critically;

(C) model appropriate personal and occupational safety and health practices and explain the importance of established safety and health protocols for the workplace;

(D) analyze and interpret the rights and responsibilities, including ethical conduct and legal responsibilities, of employers and employees; and

(E) analyze the importance of exhibiting good citizenship and describe the effects of good citizenship on the development of home, school, workplace, and community.

(2) The student develops a supervised agriculture experience program. The student is expected to:

(A) plan, propose, conduct, document, and evaluate a supervised agriculture experience as an experiential learning activity;

(B) use appropriate record-keeping skills in a supervised agricultural experience;

(C) participate in youth agricultural leadership opportunities;

(D) review and participate in a local program of activities; and

(E) create or update documentation of relevant agricultural experience such as community service, professional, or classroom experiences.

(3) The student explains the current applications of geographic information system (GIS) in agriculture, food, and natural resources and identifies the future need for GIS in precision agriculture. The student is expected to:

(A) research and compare current and emerging careers related to GIS in agriculture and natural resource fields;

(B) identify and analyze applications of GIS technologies in agriculture, food, and natural resources;

(C) explain GIS data as it pertains to agriculture; and

(D) describe the types of licensing, certification, and credentialing requirements related to GIS occupations.

(4) The student analyzes geographic information and spatial data types in agriculture, food and natural resources. The student is expected to:

(A) identify the uses of GIS in agriculture;

(B) identify the GIS terminology used in agriculture applications, such as spatial analysis, remote sensing, georeferencing, geostatistics, and geocoding;

(C) identify GIS models and representations in precision agriculture;

(D) explain GIS representations of geographic phenomena in soil types, topography, and farming management;

(E) organize and describe spatial data in yield monitoring for crop planning; and

(F) analyze GIS data sources and ethics in agriculture.

(5) The student uses agriculture, food, and natural resources GIS tools. The student is expected to:

(A) identify hardware and software for agriculture data management and processing;

(B) explain spatial data capture and preparation, spatial data storage and maintenance, spatial query and analysis, and spatial data presentation for agriculture; and

(C) describe remote sensing tools and technologies used in precision farming, including unmanned aerial support (UAS), unmanned aerial vehicles (UAV), and global positioning satellite (GPS).

(6) The student integrates spatial referencing and global positioning techniques in agriculture, food, and natural resources. The student is expected to:

(A) explain spatial referencing systems and projections for capturing and displaying agricultural data; and

(B) identify uses for satellite-based positioning to increase agriculture proficiency.

(7) The student evaluates applications for spatial data entry and preparation for agricultural analysis. The student is expected to:

(A) analyze agricultural GIS spatial data; and

(B) explain and analyze data accuracy and precision related to using GIS in agriculture.

(8) The student performs agricultural spatial data analysis. The student is expected to:

(A) analyze GIS maps of agricultural fields to determine variables that would impact maximum crop yields;

(B) compare vector and raster-based data for agricultural analysis; and

(C) explain types of GIS analysis used in natural resource management.

(9) The student creates spatial data visualizations and cartographic models. The student is expected to:

(A) identify types of GIS maps used in agriculture;

(B) develop GIS maps for various types of agricultural data;

(C) identify and explain the purpose of cartographic symbols used in precision farming; and

(D) analyze visual data and explain how the data is used in agricultural decision making.

§127.61. Beekeeping and Honey Processing (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Principles of Agriculture, Food, and Natural Resources. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Agriculture, Food, and Natural Resources career cluster focuses on the essential elements of life, food, water, land, and air. This career cluster includes occupations ranging from farmer, rancher, and veterinarian to geologist, land conservationist, and florist.

(3) Beekeeping and Honey Processing is a course designed to provide students with the academic and technical knowledge and skills that are required to pursue a career related to beekeeping, apiary operations, honey harvesting, and related industries. Beekeeping and honey processing is a vital part of the United States agricultural economy. To prepare for success in Beekeeping and Honey Processing, students need opportunities to learn, reinforce, experience, apply, and transfer their knowledge and skills in a variety of settings.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) identify career and entrepreneurship opportunities for a chosen occupation in the field of agriculture and develop a plan for obtaining the education, training, and certifications required for the chosen occupation;

(B) model professionalism by continuously exhibiting appropriate work habits, solving problems, taking initiative, communicating effectively, listening actively, and thinking critically;

(C) model appropriate personal and occupational safety and health practices and explain the importance of established safety and health protocols for the workplace;

(D) analyze and interpret the rights and responsibilities, including ethical conduct and legal responsibilities, of employers and employees; and

(E) analyze the importance of exhibiting good citizenship and describe the effects of good citizenship on the development of home, school, workplace, and community.

(2) The student develops a supervised agriculture experience program. The student is expected to:

(A) plan, propose, conduct, document, and evaluate a supervised agriculture experience as an experiential learning activity;

(B) use appropriate record-keeping skills in a supervised agricultural experience;

(C) participate in youth agricultural leadership opportunities;

(D) review and participate in a local program of activities; and

(E) create or update documentation of relevant agricultural experience such as community service, professional, or classroom experiences.

(3) The student explores the biology of bee behavior. The student is expected to:

(A) identify different types and life spans of bees;

(B) explain the different roles assumed by the different types of honeybees, including the queen, drones, and workers; and

(C) describe honeybee development, castes, behavior, division of labor, and the bee life cycle, including larval, pupal, and adult stages.

(4) The student analyzes beehive design and development. The student is expected to:

(A) identify the site characteristics required for successful beehive production;

(B) analyze factors such as climatic characteristics and food sources to determine the suitability of a beehive site for honey harvesting and pollination;

(C) research and compare the conditions of successful beehives in other parts of the world with similar local conditions; and

(D) develop a beehive design and installation plan, including consideration of sunlight, access to water, wind, topography, human and animal habitation, and good neighbor policy.

(5) The student evaluates technology and best practices for weatherizing a beehive. The student is expected to:

(A) explain the environmental conditions that lead to bee colonies adapting to extremes in climate conditions;

(B) compare seasonal strategies for proper beehive management and describe why best management practices change based on the seasons, including spring, summer, autumn, and winter; and

(C) explain practices for winterizing hives.

(6) The student demonstrates beehive management techniques. The student is expected to:

(A) identify the tools of an apiarist and demonstrate safe and proper usage of tools;

(B) demonstrate inspection of a beehive and describe necessary equipment, including a bee suit, a smoker, and a comb replacement;

(C) explain beehive training techniques, including diagnosing the brood pattern, adding brood comb to the nest, switching colonies, feeding bees, providing water, removing old combs, extracting honey, and caging queens;

(D) identify safety precautions in the field while handling live bees, caring for the colonies in the hives, and extracting honey and honeycomb;

(E) explain the proper methods of bee handling to prevent harm to handlers and others; and

(F) describe personal protective equipment used to reduce the risk of accidents.

(7) The student develops an integrated pest management plan for beehives. The student is expected to:

(A) identify the major insect pests and diseases of honeybees;

(B) compare the components of honeybee integrated pest management; and

(C) describe the safe usage of pesticides in honeybee hives.

(8) The student examines honey harvesting and the use of proper equipment and tools. The student is expected to:

(A) describe the tools and equipment used in honey production, including a bee brush, fume board, honey drip tray, nectar detector, escape board, and extractor;

(B) explain the safe use of honey harvesting tools;

(C) explain the use of technology in modern honey production systems; and

(D) explain the appropriate procedures used to extract honey.

(9) The student identifies procedures and regulations for sanitation and safety in the food industry. The student is expected to:

(A) identify food industry inspection standards, including hazard analysis and critical control points;

(B) identify the appropriate chemicals used in the food industry, specifically in honey processing;

(C) identify safety and governmental regulations involved in the processing and labeling of foods, including honey;

(D) explain the procedures relating to the safe manufacture of foods through hygienic food handling and processing;

(E) develop and maintain sanitation schedules; and

(F) identify food safety laws that impact the bee industry.

(10) The student demonstrates an in-depth understanding of a beekeeping and honey processing business, including production, processing, marketing, sales, and distribution. The student is expected to:

(A) describe the roles of an entrepreneur in a beekeeping and honey processing operation;

(B) differentiate between small, medium, and large-sized honey businesses;

(C) create a list of tools and equipment needed to start a beekeeping operation and develop a budget to start a beekeeping business; and

(D) develop a business model for beekeeping, honey production, and honey processing.

(11) The student completes the process for development, implementation, and evaluation of a marketing plan and a financial forecast for beekeeping. The student is expected to:

(A) identify and explain the target market for honey-related products;

(B) create and conduct a customer survey;

(C) analyze the customer survey results;

(D) identify modification recommendations based on customer survey results;

(E) complete a detailed honey-related products market analysis;

(F) analyze and explain different types of marketing strategies;

(G) describe a social media marketing campaign for honey-processed products; and

(H) develop and explain a projected income statement, cash budget, balance sheet, and projected sources and uses of funds statement.

(12) The student explains the scope and nature of distribution of honey-related products. The student is expected to:

(A) explain effective distribution activities, including transportation, storage, product handling, and inventory control;

(B) explain how distribution can add value to goods, services, and intellectual property; and

(C) analyze distribution costs for honey-related products.

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 December 9, 2024.

TRD-202405914

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SUBCHAPTER F. BUSINESS, MARKETING,  
AND FINANCE

19 TAC §127.262, §127.263

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which permits the SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to adopt rules to ensure that a student may comply with the curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.262. Marketing (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Business, Marketing, and Finance. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Business, Marketing, and Finance Career Cluster focuses on careers in planning, organizing, directing, and evaluating business functions essential to efficient and productive business operations.

(3) The Marketing course explores the seven core functions of marketing, which include marketing planning -- why target marketing and industry affect businesses; marketing-information management -- why market research is important; pricing -- how prices maxi-

mize profit and affect the perceived value; product/service management -- why products live and die; promotion -- how to inform customers about products; channel management -- how products reach the final user; and selling -- how to convince a customer that a product is the best choice. Students will demonstrate knowledge through hands-on projects that may include conducting research, creating a promotional plan, pitching a sales presentation, and introducing an idea for a new product or service.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student defines marketing and identifies the seven core functions of marketing. The student is expected to:

(A) define marketing and explain the marketing concept; and

(B) identify the seven core functions of marketing, including marketing planning, marketing-information management, pricing, product/service management, promotion, channel management, and selling.

(2) The student knows the interrelationship and purpose of the marketing mix or 4P's of marketing: product, price, promotion, and place. The student is expected to:

(A) identify and describe the four elements of the marketing mix, including product, price, place, and promotion;

(B) explain how each component of the marketing mix contributes to successful marketing;

(C) analyze the interdependence of each element of the marketing mix with the other three elements;

(D) develop and present an idea for a new product or service and the marketing mix for the new product or service; and

(E) investigate and explain how to determine the feasibility of a new product or service proposal.

(3) The student knows how a company considers internal and external factors to understand the current market. The student is expected to:

(A) explain the internal and external factors that influence marketing planning;

(B) define a marketing plan and describe each step in the plan;

(C) identify and explain market position and market share;

(D) explain how a business can use a strengths, weaknesses, opportunities, and threats (SWOT) analysis to plan for opportunities in the market;

(E) conduct a SWOT analysis; and

(F) analyze the data from a SWOT analysis to make informed business decisions.

(4) The student applies the concepts of market and market identification to make informed business decisions. The student is expected to:



- (A) define the term market;
- (B) identify the target market for a product or service;
- (C) define niche marketing, identify examples of niche marketing, and compare niche marketing to other marketing strategies;
- (D) analyze an appropriate target market within a specific industry;

(E) compare types of markets, including business to business and business to consumer; and

(F) identify real-life scenarios of effective markets and explain what makes a market effective.

(5) The student understands the concept of market segmentation. The student is expected to:

(A) define the term market segmentation;

(B) explain the commonly used types of market segmentation, including demographic segmentation, geographic segmentation, psychographic segmentation, and behavioral segmentation;

(C) analyze the impact of culture on buying decisions;  
and

(D) describe how market segmentation concepts apply to real-world situations.

(6) The student understands the purpose and importance of gathering and evaluating information for use in making business decisions. The student is expected to:

(A) describe marketing information and how it influences marketing decisions;

(B) use marketing-research tools to gather primary and secondary data;

(C) compare primary and secondary research data;

(D) define analytics;

(E) identify sources of data and information that can be analyzed to make business decisions;

(F) identify key business metrics that are used to make business decisions or evaluate outcomes of business decisions; and

(G) analyze data and make recommendations for improving business operations.

(7) The student explains concepts and strategies used in determining and adjusting prices to maximize return and meet customers' perceptions of value. The student is expected to:

(A) investigate and describe how businesses make pricing decisions;

(B) identify and explain goals for pricing, including profit, market share, and competition;

(C) analyze factors affecting price, including supply and demand, perceived value, costs, expenses (profit margin), and competition;

(D) explain the economic principle of break-even point;

(E) explain key pricing terms, including odd/even pricing, loss leaders, prestige pricing, penetration pricing, price bundling, price lining, and everyday low pricing; and

(F) explain how supply and demand affect price.

(8) The student explains the role of product or service management as a marketing function. The student is expected to:

(A) explain the concept of product mix, including product lines, product width, and product depth;

(B) explain the importance of generating new product ideas;

(C) analyze the product mix for a current business;

(D) identify and discuss the components of the product life cycle, including introduction, growth, maturity, and decline; and

(E) identify the impact of marketing decisions made in each stage of the product life cycle.

(9) The student knows the process and methods to communicate information about products to achieve a desired outcome. The student is expected to:

(A) explain the role of promotion as a marketing function;

(B) identify and describe elements of the promotional mix, including advertising, public relations, personal selling, and sales promotion;

(C) describe and demonstrate effective ways to communicate features and benefits of a product to a potential client; and

(D) analyze and evaluate websites for effectiveness in achieving a desired outcome.

(10) The student identifies promotional channels used to communicate with the targeted audiences. The student is expected to:

(A) create advertising examples using various media, including print media such as outdoor, newspapers, magazines, and direct mail; digital media such as email, apps, and social media; and broadcast media such as television and radio, to communicate with target audiences;

(B) describe various public-relations activities such as a press releases and publicity management;

(C) analyze and compare examples of sales promotions such as coupons, loyalty programs, rebates, samples, premiums, sponsorship, and product placement; and

(D) explain the role of marketing ethics in promotional strategies.

(11) The student explores the role of channel members and methods of product transportation. The student is expected to:

(A) define channel of distribution;

(B) describe the roles of intermediaries, including manufacturer, agent, wholesaler/industrial distributor, retailer, and consumer/industrial user, and explain how the roles may impact business decisions and the success of a business;

(C) identify and discuss the methods of transportation for products, including road, air, maritime, rail, and intermodal; and

(D) analyze and explain the impact of the distribution channel on price.

(12) The student demonstrates how to determine client needs and wants and responds through planned and personalized communication. The student is expected to:

(A) explain the role of personal selling as a marketing function;

(B) explain the role of customer service as a component of selling relationships;

(C) explain the importance of preparing for the sale, including gaining knowledge of product features and benefits, identifying the target market and their needs, and overcoming common objections; and

(D) identify and explain ways to determine needs of customers and their buying behaviors, including emotional, rational, or patronage.

(13) The student demonstrates effective sales techniques. The student is expected to:

(A) describe the steps of the selling process such as approaching the customer, determining needs, presenting the product, overcoming objections, closing the sale, and suggestive selling;

(B) explain effective strategies and techniques for various sales situations; and

(C) develop and pitch a sales presentation for a product or service using the steps of the sales process such as addressing customers' needs, wants, and objections and negotiating the sale.

(14) The student implements a marketing plan. The student is expected to:

(A) identify a key target audience;

(B) develop an appropriate message and select a medium to attract customers;

(C) create a promotional plan that includes target market, promotional objective, advertising media selection, promotional schedule, and budget;

(D) develop and present a marketing plan to an audience; and

(E) analyze various marketing plans for effectiveness.

(15) The student knows the nature and scope of project management. The student is expected to:

(A) investigate and describe the various tools available to manage a project such as a Gantt chart; and

(B) define and explain the components of a project plan, including project goals schedule, timeline, budget, human resources, quality management, risk management, monitoring, and controlling a project.

(16) The student knows the nature and scope of ethics in marketing. The student is expected to:

(A) analyze and explain the role and use of ethics in marketing;

(B) research and discuss how ethics has affected a company's profitability; and

(C) describe how marketing ethics can be effectively applied to the decision-making process.

§127.263. Retail Management (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Business, Marketing, and Finance. Students shall be awarded one credit for the successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current professions.

(2) The Business, Marketing, and Finance Career Cluster focuses on planning, managing, and performing marketing activities to reach organizational objectives.

(3) Retail Management is designed as a comprehensive introduction to the principles and practices of retail management. The course explores the process of promoting greater sales and customer satisfaction by gaining a better understanding of the consumers of the goods and services provided by a company. The course provides an overview of the strategies involved in the retail process such as distributing finished products created by the business to consumers and determining what buyers want and require from the retail market.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student uses self-development techniques and interpersonal skills to accomplish retail management objectives. The student is expected to:

(A) describe and demonstrate effective interpersonal and team-building skills involving situations with coworkers, managers, and customers;

(B) create a self-development plan that includes improving leadership and interpersonal skills and that identifies opportunities to participate in leadership and career development activities; and

(C) identify and describe employability skills needed to be successful in the retail marketing industry.

(2) The student explores features of excellent customer service. The student is expected to:

(A) discuss the importance of and demonstrate effective communication skills such as active listening, evaluating nonverbal signals, and use of appropriate grammar, vocabulary, and tone;

(B) present written and oral communication, including email, traditional letter writing, face-to-face conversations, and phone conversation, in a clear, concise, and effective manner for a variety of purposes and audiences;

(C) discuss how company policy impacts an employee's interactions with consumers and a consumer's interactions with the retail establishment; and

(D) analyze how attitude impacts a consumer's experience with the retailer.

(3) The student creates professional documents required for employment. The student is expected to:

(A) develop a professional portfolio or resume;

(B) write appropriate business correspondence such as a letter of intent and a thank you letter;

(C) complete sample job applications accurately and effectively; and

(D) explain protocol for identifying and asking for references.

(4) The student analyzes non-store retailing modalities, including direct selling, telemarketing, online retailing, automatic vending, direct marketing, and e-tailing. The student is expected to:

(A) investigate and evaluate the effectiveness of marketing and selling through online platforms such as mobile apps and software applications;

(B) analyze and explain the disadvantages of non-store retailing such as security concerns, inability to interact with the customer, delay in customer receipt of the product, less ease of return for unwanted items, and the lack of social interaction between customers and retailers; and

(C) analyze and explain the advantages of non-store retailing such as unlimited access for customers to view the inventory, the ability for customers to purchase 24 hours per day/7 days a week, lower overhead cost, and a larger inventory of items than is housed in a brick-and-mortar facility.

(5) The student analyzes marketing research to make changes to business strategies or operations. The student is expected to:

(A) synthesize and analyze data collected through surveys, interviews, group discussions, and internal records to create data reports;

(B) explain how data reports are used to make decisions to improve a retailer's practices and improve overall operations;

(C) analyze and evaluate the effective use of surveys to gather data needed by the retailer to make effective operational decisions;

(D) disaggregate and analyze internal data such as sales data, shipping data, finance reports, inventory reports, and customer and personnel feedback collected by the retailer to make effective operational decisions;

(E) disaggregate and analyze marketing data based on indicators such as age, gender, education, employment, income, family status, and ethnicity to identify and evaluate products based on the retailers' target market; and

(F) identify and analyze how the product, price, promotion, and placement of the product impacts the retail market.

(6) The student understands the role and responsibilities of a buyer in retail management and understands the purpose of analyzing the target market to interpret consumer needs and wants based on data. The student is expected to:

(A) define and describe various merchandising categories such as staple, fashion, seasonal, and convenience;

(B) describe merchandise plans and their components, including planned sales, planned stock, planned stocked reductions, and planned retail purchases;

(C) analyze and discuss each stage of a product's life cycle, including introduction, growth, maturity, and decline, and explain how each stage relates to the target market; and

(D) develop a budget based on financial goals.

(7) The student applies inventory management strategies to effectively create and manage reliable tracking systems to schedule purchases, calculate turnover rate, and plan merchandise and marketing decisions. The student is expected to:

(A) describe the process of purchasing inventory and executing a purchase order, transporting orders, and receiving orders;

(B) explain inventory management practices, including ordering, storing, producing, and selling merchandise;

(C) differentiate between perpetual and periodic inventory tracking methods and describe how point-of-sale software, universal product codes, radio frequency identification, stock shrinkage, and loss prevention impact a retailer's inventory management; and

(D) analyze and describe how stock turnover rates impact inventory.

(8) The student evaluates retailer pricing strategies based on factors such as competition, the economy, and supply and demand to maximize sales and profit. The student is expected to:

(A) analyze how uncontrollable factors such as competition, the economy, and supply and demand impact pricing;

(B) explain how controllable factors such as company goals, operating expenses, and product life cycles impact pricing;

(C) differentiate between demand-based pricing, competition-based pricing, and cost-based pricing and explain how each pricing method is used to determine the base price for a product;

(D) identify and describe how market share impacts pricing of products; and

(E) create price points using keystone pricing, industry benchmarks, and industry surveys.

(9) The student explores effective promotional activities, including advertising, sales promotion, public relations, and personal selling, that retail managers use to inform, persuade, and remind customers of products that will meet consumer needs. The student is expected to:

(A) explain the six elements of effective communication, including source, message, channel, environment, context, and feedback;

(B) demonstrate effective written, verbal, and nonverbal communication;

(C) analyze and evaluate promotional communication techniques used to inform or motivate consumers to invest in products or services;

(D) differentiate between techniques used for advertising, public relations, personal selling, and sales promotion; and

(E) investigate and evaluate technology applications that promote items using online advertising, web presence, social media, email campaigns, and other modes of electronic promotions.

(10) The student analyzes and applies personal selling elements needed in retail management to determine how to generate sales. The student is expected to:

(A) explain sales generating techniques, including prospecting, solution development, buyer qualification, opportunity qualification and control, negotiation, and account management and follow-up;

(B) describe how ethical behaviors of a sales associate impacts the retail market;

(C) demonstrate effective selling techniques needed in the retail market;

(D) analyze and describe best practices in product training for sales associates;

(E) explain how determining the needs, presenting the product, handling objections, closing the sale, and following up with customers increases sales for the retailer; and

(F) identify effective questions and questioning techniques sales associates use with consumers to gain a competitive advantage or increase sales and discuss the importance of strategically selecting questions and techniques based on the product or service and target market.

(11) The student explores how to effectively use visual merchandising. The student is expected to:

(A) analyze and describe how a retailer's storefront, store layout, store interior, centralized visual merchandising, and interior displays impact sales and a consumer's experience with the business; and

(B) develop a visual merchandising plan using proper design elements such as mannequins, props, lighting, color, signage, and graphics.

(12) The student understands the role of the retail manager for recruiting, hiring, training, supervising, and terminating employees as well as maintaining the everyday operation of a business to ensure that it functions efficiently and meets established goals. The student is expected to:

(A) identify and describe effective methods of recruiting employees externally;

(B) explain effective methods of recruiting employees internally;

(C) describe how to recruit a diverse pool of talent for employment consideration;

(D) explain the importance of the Equal Employment Opportunity Commission guidelines on the recruitment process;

(E) explain the benefits of training employees to learn new skills and technologies and comply with new laws and regulations;

(F) develop an employee appraisal program;

(G) explain an effective employee performance evaluation system and the importance of including supervisors and managers, peers, customers or clients, and subordinates in the process; and

(H) identify leadership and career development activities such as involvement with appropriate student and local management associations and create a personal development plan that includes participation in leadership and career development activities.

(13) The student understands the importance of effective teams and how effective leaders implement group development strategies. The student is expected to:

(A) explain the process of forming, storming, norming, performing, and adjourning;

(B) analyze and discuss effective interpersonal and team-building skills involving situations with coworkers, supervisors, and subordinates;

(C) investigate and analyze personal integrity and its effects on relationships in the workplace;

(D) describe characteristics of successful working relationships such as teamwork, conflict resolution, self-control, and the ability to accept criticism;

(E) discuss the importance of showing respect to all people and explain how showing respect to all people impacts the success of a business;

(F) identify employer expectations and discuss how meeting employer expectations impacts the success of a business; and

(G) explain and demonstrate productive work habits and attitudes.

(14) The student explores the practice of risk management, including identifying, assessing, and reducing risk through proper planning. The student is expected to:

(A) differentiate between natural, human, market, economic, and market risks;

(B) differentiate between controllable and uncontrollable risks;

(C) investigate and explain effective strategies for identifying, assessing, and reducing risks; and

(D) analyze how financial losses from human, physical, and natural risk factors can be minimized through the use of insurance.

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

Earliest possible date of adoption: January 19, 2025

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



## SUBCHAPTER J. HEALTH SCIENCE

### 19 TAC §127.510, §127.511

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which permits the SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to adopt rules to ensure that a student may comply

with the curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.510. Speech and Language Development (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisites: Principles of Health Science, Anatomy and Physiology, and Introduction to Speech Pathology and Audiology. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostics services, health informatics, support services, and biotechnology research and development.

(3) The Speech and Language Development course provides advanced knowledge and skills related to speech and language acquisition and growth of developing children. Understanding healthy development and speech, language, and communication developmental milestones is a prerequisite for studying communication disorders. This course provides students with the knowledge and skills necessary to pursue further education, possibly culminating in a bachelor's degree and subsequent master's degree in communication sciences and disorders.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or co-curricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) explain the importance of and demonstrate clear, concise, and effective verbal and non-verbal communication; and

(B) describe and demonstrate effective teamwork skills, including cooperation, contribution, and collaboration.

(2) The student understands basic human communication processes, including the biological, neurological, psychological, developmental, linguistic, and cultural processes. The student is expected to:

(A) differentiate between communication, speech, language, and hearing;

(B) summarize the structural bases of speech production and hearing;

(C) compare anatomy and physiology of the speech mechanism;

(D) examine and describe the anatomy and physiology of the auditory system;

(E) identify and describe healthy verbal and nonverbal communication development;

(F) describe the developmental building blocks and prerequisites for healthy speech and language development;

(G) identify and define terminology related to human communication such as speech sound production, fluency (stuttering), voice, language, hearing, hearing loss, breathing, swallowing, pragmatics, and cognition; and

(H) explain social-interactive and psychological bases of communication and the influences it has on interpersonal communication, including linguistic and cultural influences.

(3) The student gains knowledge and understanding of various theoretical perspectives of healthy speech and language acquisition. The student is expected to:

(A) investigate and explain the major theories of language acquisition;

(B) compare the major theories of speech sound production; and

(C) research and explain the connections between language development and speech development as they relate to phonological awareness in learning to read.

(4) The student understands the healthy development of speech sound production in children. The student is expected to:

(A) describe articulatory phonetics and explain how articulatory phonetics relate to the respiratory system, including the larynx, vocal tract, articulators (velopharynx, tongue, lips, and jaw), and air flow;

(B) analyze the foundation for speech acquisition in relation to auditory perception before birth and in infants;

(C) describe early vocal development in infants as a prerequisite for speech;

(D) explain how the use of vowels by infants and young children is important for the development of speech;

(E) illustrate ways to categorize or describe vowel and diphthong production;

(F) research and describe the development of consonant inventories in young English-speaking children;

(G) describe and differentiate between models for describing consonant production;

(H) summarize progression in speech development for combining sounds into syllable shapes and words; and

(I) analyze the linguistic and cultural influences of the heritage/native language on the development of speech sound production in English.

(5) The student understands the components of a developing language system and how language skills develop in children. The student is expected to:

(A) identify and explain the components of a language system, including phonology, phonetics, morphology, syntax, semantics, and pragmatics;

(B) explain the components of a developing language system in terms of vocabulary, grammar, and social and interpersonal communication;

(C) describe the prerequisite skills for developing language;

(D) differentiate between language delay, language disorders, and language difference;

(E) outline the milestones of healthy language development from birth through age five years related to comprehension and expression;

(F) summarize healthy language development from Kindergarten (age 5) through Grade 5 (age 10 or 11) and describe factors that influence age-appropriate development of language;

(G) describe healthy continuing language development in adolescence for each component of a developing language system; and

(H) compare cultural and ethnic differences in language development.

(6) The student explores the healthy development of verbal fluency skills in children. The student is expected to:

(A) define and differentiate between verbal fluency, disfluencies, and stuttering;

(B) identify and explain common disfluencies and periods of expected disfluencies;

(C) explain the development of speech and language skills;

(D) differentiate between and discuss variables that may affect verbal fluency; and

(E) describe ways to measure verbal fluency for English language learners and evaluate the effectiveness of each method.

(7) The student explores parameters of voice production in children and adults. The student is expected to:

(A) describe the physical and physiological parameters of voice production;

(B) describe the components of healthy voice production, including voice quality, pitch, loudness, resonance, and duration;

(C) explain causes or etiologies of variations in voice production;

(D) describe how parameters of voice production change throughout the span of life;

(E) analyze environmental variables that may affect voice production;

(F) explain the practice of speech-language pathology and allowable services; and

(G) analyze the ethical considerations for the speech-language pathologist in dealing with individuals with a possible voice disorder and the requirement for ongoing work with a physician.

(8) The student understands the development of effective language and communication skills needed to demonstrate high levels of achievement in elementary and secondary school. The student is expected to:

(A) research and describe the milestones of communication development and literacy development;

(B) compare milestones of communication development to the milestones of literacy development;

(C) differentiate between interpersonal language used for conversational interaction and more formal, literate language used for learning academic content;

(D) define and provide examples of tier 1, tier 2, and tier 3 vocabulary as it relates to language development and meeting grade level expectations of academic vocabulary across subject areas;

(E) explain the development of language used for oral and written narratives and demonstrate how story grammar can be used as a bridge between conversational language and academic language;

(F) analyze the development of pragmatic-language skills and the types of verbal, nonverbal, and written communication skills needed to do well in school; and

(G) define emergent literacy and analyze the language base necessary for the development of reading skills.

(9) The student explores healthy and unhealthy speech and language development. The student is expected to:

(A) describe the role of the speech-language pathologist in determining healthy speech and language development and speech sound disorders and language disorders;

(B) explain the purpose of and describe techniques for screening speech and language skills in children;

(C) explain the purpose of and describe techniques for evaluating speech and language skills in children;

(D) analyze the Response to Intervention (RtI) method for accurately identifying a speech or language disorder in school-age children; and

(E) discuss the role of the speech-language pathologist in referral, counseling, and providing basic information when there are concerns about a child's speech or language development.

(10) The student demonstrates effective verbal and nonverbal communication skills. The student is expected to:

(A) describe and demonstrate appropriate communication skills when interacting with elementary age students, classroom teachers, speech-language pathologists, principals, and parents in various situations;

(B) identify and demonstrate verbal and nonverbal communication techniques that should be used when communicating with children who have sensory loss, language barriers, cognitive impairment, and other learning disabilities;

(C) identify and evaluate electronic communication and technology devices that may be used when interacting with children with communication disorders; and

(D) differentiate between oral interpretation and translation skills from English to a second language.

(11) The student explores the influence of dialects of Standard American English or native language on the development of speech and language skills in English and on the production of English. The student is expected to:

(A) provide examples of how a common phrase may be expressed across Standard American English and three different dialects;

(B) describe how speech and language patterns vary as a function of language, age, socioeconomic status, and geography;

(C) analyze the characteristics of American English dialects in terms of speech sound production and language use;

(D) explain the influence of heritage language on the speech sound production and grammar development of English in emergent bilingual students; and

(E) analyze speech and language patterns of English language learners in terms of expected speech and language development.

§127.511. *Speech Communication Disorders (One Credit), Adopted 2025.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisites: Principles of Health Science, Anatomy and Physiology, Introduction to Speech-Language Pathology and Audiology, Speech and Language Development, and Human Growth and Development. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostics services, health informatics, support services, and biotechnology research and development.

(3) The Speech Communication Disorders course is designed to provide for the development of advanced knowledge and skills related to an overview of communication disorders that occur in children and adults in the areas of speech sound production, stuttering, voice disorders, and the language areas of semantics, syntax, pragmatics, phonology, and metalinguistics. An overview of treatment for hearing loss and deafness will also be provided.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or co-curricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner; and

(B) demonstrate the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student demonstrates knowledge of the nature of speech, language, hearing, and communication disorders and differences. The student is expected to:

(A) identify the anatomy and describe the function of the peripheral and central auditory pathways;

(B) describe the physical and psychological attributes of sound;

(C) differentiate between the different types of hearing loss and their causes;

(D) describe the impact of hearing loss on speech and language development;

(E) compare the processes of speech, language, and hearing in people of various cultures;

(F) identify and relate disorder differences in relationship to communication skills;

(G) explain the concepts of speech, language, hearing, and communication disorders across the human lifespan; and

(H) explain potential barriers and solutions that an interpreter or translator must consider when communicating with a child with a communication disorder.

(3) The student demonstrates knowledge of the etiologies, characteristics, and anatomical/physical, acoustic, psychological, developmental, linguistic, and cultural correlates of communication disorders across the human lifespan. The student is expected to:

(A) compare common causes of hearing impairment in children and adults;

(B) analyze the causes of speech, language, and hearing disorders across the lifespan;

(C) identify common communication and hearing disorders, their typical symptoms, etiologies, characteristics, and associated correlates;

(D) evaluate the impact of communication disorders on the individual; and

(E) compare cultural variations in how communication disorders are perceived.

(4) The student describes the types of communication disorders most commonly seen in children and the services provided by professionals in this field to provide habilitation or rehabilitation. The student is expected to:

(A) analyze speech sound disorders of the child's phonological system and describe the production of speech sounds such as place, manner, voicing, and distinctive feature analysis;

(B) describe and organize evidence-based treatment approaches for speech sound disorders;

(C) summarize fluency disorders, including secondary characteristics;

(D) analyze evidence-based treatment approaches for stuttering;

(E) identify voice disorders in terms of vocal quality, pitch, volume, resonance, and duration;

(F) develop a plan for an evidence-based treatment for voice disorders and the required interface with a physician;

(G) explain language disorders in terms of the child's use of syntax, morphology, semantics, pragmatics, phonology, and metalinguistics; and

(H) compare current evidence-based treatment approaches for language disorders in preschool and elementary-age children.

(5) The student demonstrates effective verbal and nonverbal communication skills. The student is expected to:

(A) demonstrate communication skills appropriate to the situation when interacting with elementary age students, classroom teachers, speech-language pathologists, principals, and parents with communication disorders;

(B) demonstrate knowledge of verbal and nonverbal communication techniques that should be used when communicating with children that have sensory loss, language barriers, cognitive impairment, and other learning disabilities; and

(C) employ electronic communication and technology devices when interacting with children with communication disorders with appropriate supervision in a school setting.

(6) The student demonstrates sensitivity and understanding of cultural and linguistic influences on an individual's communication patterns and describes how cultural and linguistic influences must be considered when working with children with communication disorders and their families. The student is expected to:

(A) analyze how speech and language patterns vary as a function of language, age, socioeconomic status, and geography;

(B) prepare a simulated interview with the parent or family member of a child referred for a hearing or communication evaluation;

(C) identify patterns of communication that are common for individuals from different cultural and linguistic backgrounds such use of eye contact, personal space, and gestures;

(D) apply design strategies for culturally sensitive family-centered practices for children with communication disorders; and

(E) explain the terms language disorder, language delay, language difference, heritage language, and dialect for describing the communication patterns of a young child.

(7) The student identifies screening, evaluation, and diagnosis procedures that are used to identify hearing loss/deafness, speech sound production disorders, stuttering, voice impairment, and language disorders in children. The student is expected to:

(A) explain principles related to different audiometric test procedures;

(B) participate in a basic audiometric test (screening procedure) and interpret a variety of test results regarding whether the individual passed or failed the screening;

(C) interpret principles related to screening speech sound production, fluency, voice, and language skills in young children;

(D) evaluate developmental screening activities that include screening speech and language development; and

(E) synthesize the components of a comprehensive diagnostic report of findings inclusive of speech sound production, fluency (stuttering), voice production, and receptive, expressive, and social language skills to explain the test results.

(8) The student identifies research-based and evidence-based practices in speech-language pathology and audiological service delivery. The student is expected to:

(A) define evidence-based practice (EBP) and differentiate EBP from scientifically-based research in the fields of speech-language pathology and audiology;

(B) define the set of Evidence Levels used by the American Speech-Language-Hearing Association as a protocol to evaluate research evidence;

(C) correlate research studies to the Evidence Levels used by the American Speech-Language-Hearing Association;

(D) analyze the role of expert opinion and clinical experience in evidence-based practice; and

(E) design and present an action research project in the field of communication disorders.

(9) The student demonstrates knowledge and understanding of a variety of treatment approaches used with children with communication disorders. The student is expected to:

(A) compare two treatment approaches for speech sound disorders;

(B) compare two treatment approaches for fluency disorders;

(C) describe and practice treatment approaches for voice disorders in the areas of vocal quality, pitch, loudness, resonance, and duration;

(D) compare two treatment approaches for language disorders in preschool children;

(E) compare two treatment approaches for language disorders in elementary school-age children; and

(F) identify treatment approaches for language disorders with children with disabilities such as autism, intellectual disability, cleft palate, or cerebral palsy.

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 December 9, 2024.

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Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 19, 2025

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



## SUBCHAPTER K. HOSPITALITY AND TOURISM

### 19 TAC §§127.569, 127.571, 127.604

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which permits the SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the



curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to adopt rules to ensure that a student may comply with the curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.569. Foundations of Restaurant Management (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Hospitality and Tourism. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Foundations of Restaurant Management provides students with a foundation to understand basic culinary skills and food service management, along with current food service industry topics and standards. Building on prior instruction, this course provides introductory insight into critical thinking, financial analysis, industry technology, social media, customer or client awareness, and leadership in the food service industry. Students will gain an understanding of restaurant operations and the importance of communicating effectively to diverse audiences for different purposes and situations in food service operations and management. Students will learn how the front of the house and the back of the house of restaurant management operate and collaborate and will obtain value-added certifications in the industry to help launch themselves into food service careers.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards as required by the food service industry. The student is expected to:

(A) explain the importance of and demonstrate effective oral and written communication;

(B) describe professional grooming, hygiene, and appropriate uniform standards for various food service positions and scenarios;

(C) describe how punctuality and time-management skills are critical to the success of employees and businesses in the food service industry;

(D) describe what demonstrating self-respect and respect for others looks like;

(E) analyze and demonstrate effective teamwork strategies and leadership styles;

(F) describe initiative, adaptability, and problem-solving techniques and discuss how each may be used in the food service industry; and

(G) identify opportunities to participate in community leadership and teamwork activities that enhance professional skills.

(2) The student develops academic knowledge and skills required to pursue the full range of career and postsecondary education opportunities within the food service industry. The student is expected to:

(A) use information management methods and tools to organize oral and written information;

(B) create a variety of written documents such as job descriptions, menus, presentations, and advertisements;

(C) calculate numerical concepts such as weights, measurements, pricing, and percentages;

(D) identify how scientific principles used in the food service industry affect customer service and profitability; and

(E) explain how to operate a profitable restaurant using mathematics and science knowledge and skills.

(3) The student uses verbal and nonverbal communication skills to create, express, and interpret information to establish a positive work environment. The student is expected to:

(A) develop and deliver business presentations;

(B) identify and create various marketing strategies used by the food service industry to increase customer or client traffic and profitability;

(C) plan and facilitate new staff member training;

(D) explain how interpersonal communications such as verbal and nonverbal cues enhance communication with coworkers, employees, managers, and customers or clients; and

(E) explain how active listening skills can affect employee morale and customer service.

(4) The student solves problems using critical thinking, innovation, and creativity independently and in teams. The student is expected to:

(A) develop ideas to increase customer service, employee morale, and profitability; and

(B) describe how employing critical-thinking and interpersonal skills can help resolve conflicts with individuals such as coworkers, customers or clients, and employers.

(5) The student uses information technology tools specific to restaurant management to access, manage, integrate, and interpret information. The student is expected to:

(A) identify information technology tools and applications used to perform workplace responsibilities and explain how the tools and applications may be used to increase productivity;

(B) describe how business financial statements may be evaluated to increase profitability;

(C) analyze customer service scenarios and make recommendations for improvements;

(D) explain how point-of-sale systems are used to evaluate business outcomes and provide customer service; and

(E) design Internet resources for business profitability.

(6) The student understands the various roles and responsibilities within teams, work units, departments, organizations, and the larger environment of the food service industry. The student is expected to:

(A) compare the roles and responsibilities of food service operations staff, including back-of-the-house, front-of-the-house, and support roles, and explain how each impact profitability of business operations;

(B) explain how developing strategic work schedules impacts effective customer service and profitability;

(C) investigate quality-control standards and practices and analyze how those standards and practices affect restaurant profitability;

(D) analyze various styles of restaurant services such as table, buffet, fast food, fast casual, and quick service for cost and level of profitability;

(E) describe how various place settings impact the customer service experience and profitability of the business; and

(F) explain how proper service techniques in food service operations contribute to the customer or client experience.

(7) The student understands the importance of health, safety, and environmental management systems in organizations and their impact on organizational performance, profitability, and regulatory compliance. The student is expected to:

(A) explain and discuss the responsibilities of workers and employers to promote safety and health in the workplace and the rights of workers to a secure workplace;

(B) explain and discuss the importance of Occupational Safety and Health Administration (OSHA) standards and OSHA requirements for organizations, how OSHA inspections are conducted, and the role of national and state regulatory entities;

(C) explain the role industrial hygiene plays in occupational safety and explain various types of industrial hygiene hazards, including physical, chemical, biological, and ergonomic;

(D) research and discuss sources of food-borne illness and determine ways to prevent them;

(E) identify and explain the appropriate use of types of personal protective equipment used in industry;

(F) discuss the importance of safe walking and working surfaces in the workplace and best practices for preventing or reducing slips, trips, and falls in the workplace;

(G) describe types of electrical hazards in the workplace and the risks associated with these hazards and describe control methods to prevent electrical hazards in the workplace;

(H) analyze the hazards of handling, storing, using, and transporting hazardous materials and identify and discuss ways to reduce exposure to hazardous materials in the workplace;

(I) identify workplace health and safety resources, including emergency plans and Safety Data Sheets, and discuss how these resources are used to make decisions in the workplace;

(J) describe the elements of a safety and health program, including management leadership, worker participation, and education and training;

(K) explain the purpose and importance of written emergency action plans and fire protection plans and describe key components of each such as evacuation plans and emergency exit routes, list of fire hazards, and identification of emergency personnel;

(L) explain the components of a hazard communication program; and

(M) explain and give examples of safety and health training requirements specified by standard setting organizations.

(8) The student explores professional ethics and legal responsibilities within the food service industry. The student is expected to:

(A) research and describe laws and guidelines affecting operations in the restaurant industry; and

(B) explain the reasons for liability insurance in the restaurant industry.

(9) The student understands the importance of developing skills in time management, decision making, and prioritization. The student is expected to:

(A) identify and explain delegation of tasks related to the effective operation of a food service establishment;

(B) describe the relationships between scheduling, payroll costs, and sales forecasting; and

(C) analyze various steps in determining the priority of daily tasks to be completed in a food service establishment.

(10) The student investigates the skills, training, and educational requirements needed to successfully gain and maintain employment in the food service industry and explores local and regional opportunities in the industry. The student is expected to:

(A) describe effective strategies for seeking employment in the food service industry;

(B) identify the required training and educational requirements that lead to a career in the food service industry;

(C) select educational and work history highlights to include in a career portfolio;

(D) create and update a personal career portfolio;

(E) describe and demonstrate effective interviewing techniques for gaining employment in the food service industry;

(F) create a personal training plan for obtaining employment in a specific occupation such as Texas Alcoholic Beverage Commission training and Food Safety and Sanitation training in the food service industry;

(G) research and analyze the local and regional labor market to determine opportunities in the food service industry;

(H) investigate professional development opportunities to keep current on relevant trends and information within the food service industry; and

(I) identify and discuss entrepreneurship opportunities within the food service industry.

(11) The student explores factors that have shaped the food service industry. The student is expected to:

(A) research and describe the history and growth of the food service industry;

(B) explain how culture and globalization influence the food service industry; and

(C) analyze current trends affecting the food service industry.

(12) The student understands factors that affect the profitability of a food service business. The student is expected to:

(A) explain the importance of effectively managing inventory to maintain profitability of the food service business;

(B) describe and demonstrate effective stewarding processes and procedures such as establishing thorough cleaning schedules and proper dishwashing techniques;

(C) describe how proper food storage techniques affect the profitability of an establishment;

(D) explain how pricing and controlling costs such as labor and supplies affect the profitability of a food service business; and

(E) analyze how customer service and customer or client loyalty affect the profitability of a food service business and compare strategies for building and maintaining customer loyalty.

§127.571. Introduction to Event and Meeting Planning (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Hospitality and Tourism, Hotel Management, or Travel and Tourism Management. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Introduction to Event and Meeting Planning introduces students to the concepts and topics necessary to understand the meetings, events, expositions, and conventions (MEEC) industry. The course will review the roles of the organizations and people involved in the businesses that comprise the MEEC industry.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) explain the importance of developing personal and professional skills such as punctuality, initiative, leadership, respect for all people, conflict management, work ethic, and adaptability;

(B) explain how critical thinking, innovation, and creativity are essential to the problem-solving process;

(C) describe appropriate professional grooming, hygiene, and appearance for the workplace;

(D) identify effective teamwork and conflict-management skills and explain how using effective teamwork and conflict-management skills leads to the achievement of collective goals;

(E) explain how planning and time-management skills and tools can be used to enhance results and complete work tasks;

(F) identify and describe essential workplace skills necessary for obtaining employment and developing a career;

(G) prepare and complete employment-related documents such as paper and electronic job applications and I-9 and W-4 forms;

(H) compare effective stress-management techniques and explain the importance of using effective stress-management techniques;

(I) explain the various steps in the decision-making process; and

(J) describe and demonstrate effective interview techniques for gaining employment in various positions and at various businesses in the MEEC industry.

(2) The student recognizes the importance of and uses oral and written communication skills in creating, expressing, and interpreting information and ideas. The student is expected to:

(A) explain the importance of using verbal and non-verbal communication skills effectively with customers or clients and colleagues;

(B) summarize information formally and informally;

(C) synthesize information from various sources and determine how to prioritize and convey relevant information to customers or clients and colleagues;

(D) explain how to use active listening skills to obtain and clarify information;

(E) develop and deliver different types of presentations such as informative, instructional, persuasive, and decision making;

(F) identify interpersonal skills used to maintain internal and external customer or client satisfaction and describe how effectively using those interpersonal skills impacts customer or client relationships; and

(G) identify and use technical vocabulary related to the meeting and event planning industry.

(3) The student applies academics with career-readiness skills. The student is expected to:

(A) explain how applying mathematical skills to business transactions such as sales forecasting, service pricing, and planning for profitability are essential to operating a successful business;

(B) calculate and interpret key ratios, financial statements, and budgets related to the hospitality event and meeting planning industry;

(C) identify opportunities in the hospitality industry to use advanced reading, writing, and mathematics skills;

(D) analyze and summarize data from tables, charts, and graphs to estimate and find solutions to problems and identify opportunities for increased profitability; and

(E) identify and use industry standards for budgeting and forecasting to maximize profit and growth.

(4) The student explores career opportunities available within the meeting and event planning segment of the hospitality industry. The student is expected to:

(A) compile a list of professional organizations that support the professionals in the convention, meeting, and event planning industry;

(B) develop a personal training plan to keep current on relevant trends and information within the meeting and event planning industry; and

(C) identify occupational opportunities for meeting and event planning for hospitality businesses and corporate businesses.

(5) The student explores the history of and current trends and career opportunities in the meeting and event planning industry. The student is expected to:

(A) describe how the meeting and event planning industry has evolved;

(B) analyze and describe current trends in the meeting and event planning industry;

(C) describe the varied occupations related to meeting and event planning such as meeting planning and management, conference planning and management, trade show planning and management, social event planning and management, association and non-profit meeting planning and management, corporation meeting planning and management, convention and visitor bureau planning and management, and destination management planning and organization;

(D) describe how a professional mentor can be beneficial to a career and identify potential mentors in the meeting and event planning industry; and

(E) create a career plan to achieve the desired career position in the meeting and event planning industry.

(6) The student explores how varying needs of customers or clients impact the event planning industry. The student is expected to:

(A) explain the importance of meeting the varying needs of customers or clients for the successful operation of a business;

(B) explain how a business plan and business activities may be modified to meet the varying needs of customers or clients; and

(C) describe how understanding diversity such as differences in social etiquette, dress, and behaviors may positively impact event and meeting planning.

(7) The student uses information technology tools in event and meeting planning to access, manage, integrate, and create information. The student is expected to:

(A) research and compare event planning software and technology tools such as tools that manage attendee engagement or

provide marking services that help perform workplace tasks and meet business objectives;

(B) create complex multimedia publications and presentations for clients and colleagues;

(C) explain how point-of-sale systems are used in the meeting and event planning industry;

(D) explain how Internet resources can promote industry growth;

(E) investigate and evaluate current and emerging technologies used to improve guest services; and

(F) use electronic tools to produce appropriate communication for planning and selling meetings and events.

(8) The student understands the professional, ethical, and legal responsibilities in event and meeting planning services. The student is expected to:

(A) explain ethical conduct such as maintaining client confidentiality and privacy of sensitive content when interacting with others;

(B) identify different components of a meeting or event contract;

(C) investigate and describe applicable rules, laws, and regulations related to event and meeting planning;

(D) discuss the reasons for providing event security;

(E) compare options for event insurance; and

(F) explain the reasons for event insurance.

(9) The student understands the importance of health, safety, and environmental management systems and their impact on organizational performance and regulatory compliance. The student is expected to:

(A) explain and discuss the responsibilities of workers and employers to promote safety and health in the workplace and the rights of workers to a secure workplace;

(B) explain and discuss the importance of Occupational Safety and Health Administration (OSHA) standards and OSHA requirements for organizations, how OSHA inspections are conducted, and the role of national and state regulatory entities;

(C) explain the role industrial hygiene plays in occupational safety and explain various types of industrial hygiene hazards, including physical, chemical, biological, and ergonomic;

(D) research and discuss sources of food-borne illness and determine ways to prevent them;

(E) identify and explain the appropriate use of types of personal protective equipment used in industry;

(F) discuss the importance of safe walking and working surfaces in the workplace and best practices for preventing or reducing slips, trips, and falls in the workplace;

(G) describe types of electrical hazards in the workplace and the risks associated with these hazards and describe control methods to prevent electrical hazards in the workplace;

(H) analyze the hazards of handling, storing, using, and transporting hazardous materials and identify and discuss ways to reduce exposure to hazardous materials in the workplace;

(I) identify workplace health and safety resources, including emergency plans and Safety Data Sheets, and discuss how these resources are used to make decisions in the workplace;

(J) describe the elements of a safety and health program, including management leadership, worker participation, and education and training;

(K) explain the purpose and importance of written emergency action plans and fire protection plans and describe key components of each such as evacuation plans and emergency exit routes, list of fire hazards, and identification of emergency personnel;

(L) explain the components of a hazard communication program; and

(M) explain and give examples of safety and health training requirements specified by standard setting organizations.

(10) The student explores marketing strategies and how effective marketing strategies are used in the meeting and event planning industry. The student is expected to:

(A) develop effective marketing strategies for meetings and events;

(B) create promotional packages for meetings and events;

(C) design an effective, comprehensive menu;

(D) analyze the state of the economy to plan effective meeting and event services; and

(E) develop a meeting and events business plan.

(11) The student understands and demonstrates appropriate professional customer service skills required by the meeting and event planning industry. The student is expected to:

(A) create a detailed plan or process to provide maximum customer service;

(B) describe and demonstrate how critical-thinking and interpersonal skills are effectively used to resolve conflicts with individuals such as coworkers, employers, guests, and clients; and

(C) analyze customer or client feedback to formulate improvements in services and products.

(12) The student explores different business segments and stakeholders within the event and meeting planning industry. The student is expected to:

(A) compare roles and responsibilities of various departments in the larger lodging environment, including food and beverage services;

(B) differentiate between meeting and event planning operations for different clients such as business, leisure, professional organizations, and students; and

(C) identify the various stakeholders in the MEEC industry.

(13) The student understands the roles and responsibilities within teams, work units, departments, organizations, and the larger environment of the meeting and event planning industry. The student is expected to:

(A) differentiate between the roles and responsibilities of meeting and event planning staff and lodging property staff;

(B) describe the responsibilities of an event manager or planner;

(C) identify and explain how operating procedures can contribute to profitable operations; and

(D) identify and explain how inventory management systems used in the meeting and event planning industry can contribute to profitable operations.

(14) The student knows how to create a functional and aesthetic meeting and event plan to meet the customer or client requirements. The student is expected to:

(A) describe how to conduct a pre-meeting or pre-event meeting with potential clients to identify the meeting or event requirements;

(B) discuss the importance of a meeting venue floorplan specification chart and appropriate meeting room set-up;

(C) compare various meeting room set-up options and describe the benefits of each option;

(D) describe how meeting room set-up options vary based on the venue;

(E) develop a meeting room set-up for a planned event;

(F) calculate the square footage required for an event based on the number of anticipated attendees for the event;

(G) identify and design effective traffic patterns for a specific event;

(H) explain and demonstrate proper table rotations; and

(I) develop a staffing guide to schedule various staff for a meeting or event.

(15) The student understands the importance of collaborating with various companies to provide an all-inclusive successful meeting or event. The student is expected to:

(A) identify the various entities involved in the meeting and event planning industry such as convention and visitors' bureaus, group travel companies, entertainers, recreations, amusements, attractions, florists, caterers, and venues and differentiate between the roles each entity plays in planning the meeting or event;

(B) differentiate between event sponsors, organizers, and producers and the events that are coordinated by each;

(C) explain and demonstrate how to effectively plan and negotiate with various entities to deliver a successful meeting or event;

(D) compare products and services from related industries; and

(E) explain how the meeting and event planning process differs based on the venue such as hotels and resorts, convention and visitors' centers, event centers, and destination venues and describe the pros and cons of convening a meeting or event at various venues.

§127.604. Practicum in Event and Meeting Planning (Two Credits), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisite: Introduction to Event and Meeting Planning. Students shall be awarded two credits for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) The Practicum in Event and Meeting Planning course will reinforce the concepts and topics necessary for the comprehensive understanding of the meetings, events, expositions, and conventions (MEEC) industry. The central focus of this course is to integrate academic education with local MEEC businesses to prepare students for success in the work force and/or postsecondary education. Students will benefit from a combination of classroom instruction and a work-based learning experience. Students will learn employability skills, communication skills, customer service skills, and other activities related to job acquisition. The course is recommended for students who have completed the required prerequisites.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates proficiency in professional standards/employability skills as required by the meeting and event planning industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory or work-based application of previously studied knowledge and skills related to event meeting and planning;

(B) demonstrate proper interview techniques for event and meeting planning occupations;

(C) complete employment-related documents such as job applications (written and electronic formats), a resume, and I-9 and W-4 forms;

(D) exhibit suitable grooming and appearance standards appropriate for the workplace and planned events;

(E) demonstrate productive work habits and a positive attitude;

(F) model knowledge of personal and occupational safety practices in the workplace; and

(G) integrate verbal, nonverbal, and written communication skills in a variety of settings.

(2) The student applies professional advancement skills and strategies in the meeting and event planning industry. The student is expected to:

(A) develop strategies to enhance career advancement and promote lifelong industry learning;

(B) describe historical events that have affected the event and meeting planning industry;

(C) formulate plans to address current events that have an effect on the event and meeting planning industry;

(D) document in manual and electronic format acquired technical knowledge and skills needed for success in the meeting planning industry;

(E) produce and present a professional portfolio, including a current resume, documentation of skill attainment or technical competencies, recognitions, awards, scholarships, community service activities, student organization participation, evaluations, letters of recommendation, and cover letters;

(F) evaluate employment options by comparing salaries and benefits offered by different companies and occupations within the industry; and

(G) develop a personal budget based on career choice using effective money management and financial planning techniques.

(3) The student demonstrates the ethics and etiquette necessary for the meeting and event planning workplace. The student is expected to:

(A) practice appropriate business and personal etiquette in the workplace;

(B) display appropriate electronic communication techniques and etiquette;

(C) exhibit the behaviors that align with the hospitality code of ethics and ethical standards; and

(D) determine the most ethical behavior or course of action in response to various situations experienced in the meeting and event planning industry.

(4) The student develops and demonstrates the interpersonal and customer service skills needed for success in the meeting and event planning environment. The student is expected to:

(A) exhibit essential workplace characteristics such as organization, perseverance, motivation, dependability, punctuality, initiative, self-control, and the ability to accept and act on criticism;

(B) demonstrate effective team-building skills such as collaboration, planning, conflict resolution, rapport-building, decision-making, problem-solving, and persuasion and influencing techniques;

(C) identify and respond to customer or client needs, including resolving customer dissatisfaction;

(D) exercise leadership by anticipating and proactively diffusing potential event issues; and

(E) negotiate to resolve conflicts in the workplace and with customers by using strategies such as active listening, "I" messages, negotiation, and offering win-win solutions.

(5) The student demonstrates the industry-based knowledge and skills required for a successful career in the event and meeting planning industry. The student is expected to:

(A) employ job-specific technical vocabulary with accuracy and fluency;

(B) explain event planning procedures designed to ensure client needs are met such as Banquet Event Orders, rate assignment, event organization, client relations, and determination of payment methods;

(C) assess meeting or event company structures and traits that lead to profitability and business success;

(D) determine the correct procedures for the execution of client events and contracts;

- (E) identify and organize tasks for daily operation;
  - (F) describe societal events that have shaped the event and meeting planning industry both in the past and present; and
  - (G) interpret the role of the convention and visitors' bureau in the event and meeting planning industry.
- (6) The student develops and practices awareness of varying needs of customers or clients understands the impact of diversity on the industry. The student is expected to:
- (A) assesses how varying needs of customers or clients impacts the event planning industry both from a planning and profitability aspect;
  - (B) demonstrate respect for individual differences;
  - (C) explain the importance of meeting the varying needs of customers or clients for the successful operation of a business;
  - (D) develop business plans and activities to meet the varying needs of customers or clients; and
  - (E) describe differences in social etiquette, dress, and behaviors and explain how differences affect the event planning process.
- (7) The student uses information technology tools in event and meeting planning to access, manage, integrate, and create information. The student is expected to:
- (A) evaluate current and emerging technologies that improve client services;
  - (B) evaluate and incorporate event planning software and technology tools that help to perform workplace tasks and meet business objectives;
  - (C) create and present multi-level (complex) multimedia presentations to clients;
  - (D) use and problem-solve issues with point-of-sale systems;
  - (E) design a plan for using Internet resources to maximize company profitability; and
  - (F) use appropriate electronic communication tools for planning and selling meetings and events.
- (8) The student differentiates between and adapts to various roles, types of events, and functions. The student is expected to:
- (A) differentiate between the types of event sponsors, organizers, and producers and their events such as trade shows, conferences, social events, and corporate meetings;
  - (B) identify various suppliers for different event planning needs and explain how they service different events;
  - (C) describe the importance of sales coordinators to events and meetings regardless of organization or type of event;
  - (D) evaluate and modify different types of catering options and menus based on the needs of the event or organization;
  - (E) evaluate and modify different types of meeting room set-ups (banquet, classroom, theater, and reception) based on the needs of the event or organization; and
  - (F) determine and organize staff and resources according to the specific needs of the organization and event.

- (9) The student collaborates within departments, organizations, and the larger environment of the meeting and event planning industry. The student is expected to:
- (A) analyze the roles and responsibilities of each level of the management structure of a venue;
  - (B) identify the advantages and disadvantages of different event destinations and facilities and their effects on profitability and customer satisfaction;
  - (C) analyze the roles and responsibilities of an in-house event manager or planner as compared to independent professionals; and
  - (D) define specific roles and responsibilities when interfacing with destination venues.
- (10) The student understands and can articulate the factors that contribute to a successful and profitable event. The student is expected to:
- (A) analyze the expenses associated with the planning and production of a meeting or event;
  - (B) analyze and evaluate how marketing techniques impact operation and profitability related to an event;
  - (C) calculate costs of supplies and evaluate how costs affect profitability;
  - (D) evaluate the impact of payroll expenses on profitability;
  - (E) analyze and modify operating procedures to result in more profitable or cost-effective operations;
  - (F) research and create a marketing plan for various markets such as weddings, government and military groups, professional and educational organizations, family or social gatherings, and geography;
  - (G) identify profit margins associated with various markets; and
  - (H) evaluate the importance of conducting pre-and post-event evaluations for continuous improvement.
- (11) The student demonstrates knowledge of potential liability situations that can affect business reputation and profitability. The student is expected to:
- (A) compare and contrast different levels of insurance and liability limits for events;
  - (B) analyze customer-provided insurance options for events;
  - (C) identify and explain legal, health, and safety obligations related to event planning;
  - (D) assess the implications and responsibilities associated with providing or allowing alcohol at an event; and
  - (E) research law enforcement requirements for events and meetings.
- The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER M. INFORMATION TECHNOLOGY

### 19 TAC §§127.689 - 127.691, 127.695 - 127.699

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which permits the SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to adopt rules to ensure that a student may comply with the curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.689. *Advanced Cloud Computing (One Credit), Adopted 2025.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended Prerequisites: At least one credit in a Level 2 or higher course in computer science, programming, software development, or networking systems. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology (IT) Career Cluster focuses on building linkages in IT occupations for entry level, technical, and professional careers related to the design, development, support, and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) The Advanced Cloud Computing course is an exploration of cloud computing. In this course, students explore cloud computing services, applications, and use cases. Students study cloud computing best practices and learn how cloud computing helps users develop a global infrastructure to support use case at scale while also developing and using innovative technologies.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate and explain positive workplace behaviors that enhance employability and job advancement such as regular attendance, promptness, attention to proper attire, maintenance of a clean and safe work environment, appropriate voice, and pride in work;

(B) demonstrate and explain positive personal qualities such as flexibility, open-mindedness, initiative, listening attentively to speakers, and willingness to learn new knowledge and skills;

(C) describe and demonstrate effective reading and writing skills;

(D) use critical-thinking skills to solve cloud computing problems; and

(E) demonstrate and explain leadership skills and how to function effectively as a team member.

(2) The student understands the impact of cloud computing technology and compares the major services offered by cloud computing providers. The student is expected to:

(A) describe the benefits and risks of cloud computing and the reasons for switching from on-premises computing to cloud computing;

(B) identify and describe the major types of cloud computing;

(C) generate sample cloud usage plans for a business case study, including a description of how each of the services can be used to improve the business;

(D) explain the purpose of a region, availability zone, and edge location; and

(E) compare the major services offered by cloud computing providers.

(3) The student demonstrates how to store and share content in the cloud. The student is expected to:

(A) identify features and functions of commonly used cloud services;

(B) locate and use common services found in cloud computing consoles;

(C) analyze how cloud services are used in real-world industries;

(D) explain the functions of a domain name system (DNS);



(E) create an object storage bucket;  
(F) explain benefits and uses of a content delivery network;  
(G) configure web content distribution via edge locations and attach it to a website;

(H) identify the benefits, features, and use cases of different types of block storage;

(I) analyze a use case and recommend the best type of virtual storage for the particular situation;

(J) create a block storage volume or physical record;

(K) attach a block storage volume to a virtual computing instance; and

(L) create a virtual computing instance that hosts a simple website.

(4) The student applies cloud security best practices in relation to identity and access management (IAM). The student is expected to:

(A) identify best practices for IAM;

(B) analyze the cultural and societal impacts of cloud security;

(C) differentiate between a role, user, and policy in cloud security;

(D) identify and use a process to resolve vulnerabilities in a web server;

(E) describe cloud security best practices and explain steps to fix security lapses;

(F) identify the best cloud security service for a given scenario;

(G) demonstrate the use of an IAM system to set up a text alert event; and

(H) compare monitoring and logging services.

(5) The student describes when to use various databases, the benefits of caching data, and how to build a virtual private cloud (VPC). The student is expected to:

(A) compare online transactional processing and online analytical processing;

(B) describe the benefits of caching data;

(C) explain and demonstrate how a load balancer is attached to a webpage;

(D) describe features and benefits of load balancing;

(E) evaluate the performance of a load balancer;

(F) create an application using a platform as a service (PaaS); and

(G) demonstrate the use of a template infrastructure as code to build a VPC.

(6) The student understands the landscape of emerging technologies in the cloud. The student is expected to:

(A) define machine learning and discuss its impacts on society, business, and technology;

(B) identify potential use cases for emerging technology in the cloud;

(C) assess value propositions of using cloud technology;

(D) identify cloud services that can analyze and protect data and manage networks;

(E) define blockchain technology and explain its benefits;

(F) explain the infrastructure of cloud development kits or services; and

(G) demonstrate the use of a software development framework to model and provision a cloud application.

(7) The student resolves common security alerts, diagrams instance states and transitions, and explains how to choose the most cost-efficient instance type. The student is expected to:

(A) describe the shared responsibility security model;

(B) identify security responsibility for cloud resources;

(C) analyze how the shared security model accounts for common threats to the cloud computing model;

(D) identify the steps required to resolve an automated security alert;

(E) describe the six instance states, including pending, running, stopping, stopped, shutting down, and terminated;

(F) identify and diagram the transitions between instance states from launch to termination;

(G) explain instance usage billing for each instance state; and

(H) determine the most cost-efficient instance state for a given situation.

(8) The student differentiates between dynamic and static websites. The student is expected to:

(A) describe and demonstrate the process for setting up a static website;

(B) compare static and dynamic websites;

(C) create a content delivery network distribution to increase the speed of a website;

(D) demonstrate the process to launch a dynamic web server;

(E) create a serverless compute function using a serverless compute console;

(F) describe the main functions of auto scaling;

(G) create a launch template and an auto scaling group; and

(H) develop a plan for monitoring an auto scaling instance or group.

(9) The student demonstrates the benefits and risks of using big data. The student is expected to:

(A) define big data and identify use cases for it within various industries;

(B) identify and evaluate the benefits and risks of big data;

(C) explain how blockchain ensures the validity and immutability of transactions, particularly in the cloud; and

(D) evaluate the benefits and risks of blockchain business applications.

§127.690. Foundations of User Experience (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 9-12. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology (IT) Career Cluster focuses on building linkages in IT occupations for entry level, technical, and professional careers related to the design, development, support, and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) In Foundations of User Experience (UX), students analyze and assess current trends in a career field that creates meaningful, approachable, and compelling experiences for users of an array of products, services, and/or initiatives of companies, governments, and organizations. Students gain knowledge of introductory observation and research skills, basic design thinking and applied empathy methodologies, collaborative problem-solving and ideation, and interaction design and solution development. The knowledge and skills acquired from this course enable students to identify real-world problems through research and data-driven investigation and to design solutions while participating in collaborative problem solving. Students are introduced to agile practices and methodologies to develop skills to take solutions from conceptual sketch to digital designs using professional software tools. Students explore how to improve the quality of user interactions and perceptions of products, experiences, and any related services.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills in the IT field with a focus in the area of UX. The student is expected to:

(A) identify job opportunities in UX and accompanying job duties and tasks;

(B) describe and use effective verbal and nonverbal communication skills;

(C) create resumes and portfolios for UX professions;

(D) use critical-thinking skills and creativity to present a solution to a user problem; and

(E) work collaboratively in a team to devise and present an efficiency or enhancement solution to a user issue within a given

timeline, while incorporating empathy methodology, agile, and design principles.

(2) The student applies professional communications strategies. The student is expected to:

(A) revise presentations for audience, purpose, situation, and intent;

(B) interpret and clearly communicate information, data, and observations;

(C) apply active listening skills to obtain and clarify information;

(D) identify multiple viewpoints of potential diverse users; and

(E) define and exhibit public relations skills that are used by UX designers.

(3) The student describes the field of UX and common elements in user-centered design. The student is expected to:

(A) analyze the current trends and challenges of the UX field;

(B) analyze and describe the diversity of roles and career opportunities across the UX field;

(C) define terminology associated with UX, including user, user experience, human-centered design, design thinking, persona, user journey, empathy map, mind maps, roadmaps, wireframes, prototypes, and portfolios;

(D) identify and explain the differences between relevant, friendly, and useful experience design;

(E) identify and explain the connection between psychology and behavior with regard to usability;

(F) explain the components of the design thinking methodology for ideation, iteration, co-creation, development, and execution; and

(G) explain how UX design affects everyday lives.

(4) The student discusses and applies the legal and ethical practices that UX designers follow when working with technology, designs, and clients. The student is expected to:

(A) identify and explain ethical use of technology;

(B) explain intellectual property laws, including copyright, trademarks, and patents, and consequences of violating each type of law;

(C) identify violations of intellectual property laws;

(D) explain the consequences of plagiarism; and

(E) demonstrate ethical use of online resources, including using proper citations and avoiding plagiarism.

(5) The student identifies and demonstrates introductory observation and research methods. The student is expected to:

(A) describe the difference between qualitative and quantitative data;

(B) conduct user interviews to gather insights into what users think about a site, an application, a product, or a process;

(C) organize ideas and user data using software tools;

(D) analyze and draw conclusions from qualitative user data collection;

(E) observe and document how users perform tasks through task analysis observations;

(F) define affinity and explain the benefits of affinity and customer journey maps;

(G) use data summaries from user interviews to create personas; and

(H) create a report or presentation, including user interview and observation data summaries, data analysis, and additional findings, for a target audience.

(6) The student applies an understanding of psychological principles used in user-centered design. The student is expected to:

(A) identify and define design principles;

(B) describe how visceral reactions inform the creation of a positive user experience;

(C) select colors to influence human behavior, the human mind, and reactions toward an intended outcome;

(D) explain recognition and scanning patterns and their importance in user-centered design;

(E) define Hick's Law and Weber's Law and explain their impact on UX design decisions;

(F) describe sensory adaptation phenomenon and perceptual set; and

(G) explain the stages of human information processing, including sensing, perceiving, decision-making, and acting.

(7) The student creates effective, accessible, usable, and meaningful solutions for the end user by using UX design principles. The student is expected to:

(A) identify end-user problems and needs in real-world environments;

(B) identify principles of accessibility such as perceivable, operable, understandable, and robust (POUR);

(C) identify and discuss the differences and connections between UX Design, Visual Design, and User Interaction in regard to usability;

(D) communicate potential solutions and ideas with a storytelling approach;

(E) sketch and refine designs within wire-framing and prototypes; and

(F) implement iterations for a design solution using structured testing protocols.

(8) The student collaborates with others to apply UX project management methods. The student is expected to:

(A) identify the relationship between UX research and design-thinking methods; and

(B) explain three different stages and roles of UX project management methods such as agile methods.

(9) The student applies UX design practices and uses technology to create digital assets. The student is expected to:

(A) use design elements such as typeface, color, shape, texture, space, and form to create a visual narrative;

(B) implement design principles such as unity, harmony, balance, scale, novelty, hierarchy, alignment, and contrast to create visual narratives;

(C) identify and explain common elements of Hyper Text Markup Language (HTML) such as tags, style sheets, and hyperlinks;

(D) apply UX design techniques in order to:

(i) create effective user interfaces for browser-based, native, and hybrid mobile applications;

(ii) demonstrate proper use of vector and raster-based design software;

(iii) explain the difference between back-end and front-end development in UX; and

(iv) create a web page containing links, graphics, and text using appropriate design principles;

(E) demonstrate basic sketching skills;

(F) create wireframes using design software;

(G) explain how design fidelity, from sketch to wireframe to prototype to visuals, aligns with and supports agile methodology; and

(H) produce digital assets.

§127.691. *Advanced User Experience Design (One Credit), Adopted 2025.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 10-12. Required prerequisite course: Foundations of User Experience.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology (IT) Career Cluster focuses on building linkages in IT occupations for entry level, technical, and professional careers related to the design, development, support, and management of hardware, software, digital interactions, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) The Advanced User Experience (UX) Design course allows students to apply skills in science and art to integrate technology as a useful, meaningful, memorable, and accessible source for all users. Students will use knowledge from the Foundations of User Experience course to expand the research, design process, testing, and communication skills essential for success in this user-focused career field.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills in the IT field with a focus in the area of UX. The student is expected to:

(A) identify job opportunities in UX and individual skills and abilities needed to apply;

(B) describe and use effective interpersonal and communication skills;

(C) identify and practice the skills associated with at least one UX professional certification;

(D) create a resume and portfolio for a UX position; and

(E) demonstrate adaptability and flexibility by adjusting project outcomes from peer-review and critique.

(2) The student understands and demonstrates legal and ethical procedures for UX designers as they apply to the use of information technology. The student is expected to:

(A) identify intellectual property violations within given scenarios; and

(B) formulate and communicate visually, orally, or in writing the ramifications and consequences of plagiarism and copyright infringement within a business context.

(3) The student connects and applies UX design conceptual foundations with real-world scenarios. The student is expected to use proper terms and professional language for UX design context, both orally and in written form.

(4) The student uses different options of project management to produce a successful UX design. The student is expected to:

(A) identify different stages of the UX design process, including research, identification of problem, ideation, prototyping, and testing, and apply these stages to refine or create products;

(B) test partial products during the UX design process and analyze results to inform the refinement phase;

(C) explain the conceptual design, content strategy, and ways to get feedback from various users and stakeholders in the project; and

(D) demonstrate effective time-management and planning to complete project tasks.

(5) The student collects and interprets data through the use of UX tools and protocols. The student is expected to:

(A) create templates for questionnaires, data collection, and summary reports;

(B) analyze data and create a summary of project conclusions that include insights into affordances and constraints of the project design;

(C) distinguish differences in qualitative research methods such as user interviews, ethnography, field studies, focus groups, and usability testing; and

(D) identify and use quantitative methods such as A/B testing, card sorting, heat maps, analytics, and user surveys.

(6) The student creates and analyzes prototypes for UX design products. The student is expected to:

(A) identify a UX problem and list potential solutions;

(B) evaluate potential solutions and create an action plan to address a problem based on desired features and requirements for a UX design product;

(C) create a presentable content strategy and develop conceptual designs and symbolic messages for a UX design prototype;

(D) generate possible solutions with ideation methods such as unstructured discussion, storyboards, brainstorming, role playing, game storming, mind mapping, teamwork games, and sketching;

(E) refine and select ideas for prototyping with a people-centered rationale for the decision;

(F) create low-fidelity prototypes, including sketches, paper models, and click-through prototypes; and

(G) create mockups and high-fidelity prototypes, including digital and physical versions.

(7) The student structures solutions while applying UX design principles. The student is expected to:

(A) explain how the connected layouts, blocks of content, visual designs, and navigation requirements enhance user experience;

(B) explain how the distinguishing of channels and formats during website development impacts usability across different devices;

(C) develop and implement design activities for co-creation, peer-review, and collaborative feedback;

(D) test and evaluate navigation experiences and compare results with current competitors; and

(E) incorporate best practices for references, including adding the designer's voice and signature.

(8) The student describes best practices and plans for a usability test. The student is expected to:

(A) create a usability test plan that includes cognitive, perceptual, emotional, and cultural information about users, data collection requirements, and user testing methods;

(B) execute testing methodologies and collect data for analysis purposes; and

(C) present conclusions and recommendations that apply design principles, communication, and creative skills.

§127.695. Information Technology Troubleshooting (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Principles of Information Technology and Computer Maintenance/Lab. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology (IT) Career Cluster focuses on building linkages in IT occupations for entry-level, technical, and professional careers related to the design, development, support,

and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) The Informational Technology Troubleshooting course is about applying logic over technical components to identify and resolve problems. The course focuses on developing a methodical approach in IT troubleshooting and leveraging those skills in a workplace environment. In this course, students learn and use proven troubleshooting methods and apply those in a collaborative workplace setting. Students develop personal success skills, including time management and personal accountability measures, strategies for collaboration and teamwork, and effective written and verbal communication skills. The knowledge and skills acquired in the course enables students to use IT resources and data safely, ethically, and within legal guidelines. Students work within a service level model that helps them to interpret, clarify, and diagnose issues with hardware, software, and networking.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) describe the benefits of effective time management and explain how to manage the use of one's time efficiently;

(B) describe and demonstrate the behaviors of an effective team member;

(C) explain the importance of emotional intelligence in the role of an IT support specialist;

(D) describe and apply strategies to resolve conflicts;

(E) identify and employ active listening skills, including paraphrasing and asking questions for clarification;

(F) communicate effectively orally and in writing when communicating with others, including team members, clients/customers, and others;

(G) identify and apply best practices for email communications;

(H) interpret technical language, documents, and diagrams and translate them into lay terminology;

(I) demonstrate the use of proper grammar and spelling and capture complete thoughts in communications and documentation; and

(J) investigate and discuss potential IT pathways for IT support specialists.

(2) The student develops and models customer-service skills. The student is expected to:

(A) identify and model the characteristics of excellent customer service;

(B) list and demonstrate the steps for opening and greeting a contact;

(C) explain the benefits of using a client's name;

(D) identify habits and situations to avoid when interacting with a client;

(E) explain the importance of keeping clients informed of status changes;

(F) list and demonstrate the steps for putting a client on hold or transferring a call;

(G) identify and demonstrate techniques and strategies for handling difficult calls and situations; and

(H) document all client communications and outcomes clearly and appropriately.

(3) The student applies procedures for various support interaction types. The student is expected to:

(A) describe the primary responsibilities and skills of an IT support specialist and how to deliver consistent, quality service;

(B) explain and demonstrate safety procedures for unpacking, handling, and repacking replacement parts;

(C) describe when to use various support delivery methods and technologies such as in-person, email, phone, web, and remote access;

(D) demonstrate the use of various support delivery models, including in-person, email, phone, web, and remote access technologies, to troubleshoot an issue; and

(E) describe the purpose and value of the security management process and the IT support specialist's role in that process.

(4) The student implements proven troubleshooting methods and strategies within the context of a service level model. The student is expected to:

(A) implement and explain a troubleshooting process for diagnosing issues with hardware, software, and the network;

(B) explain the importance of clearly documenting progress throughout the troubleshooting process;

(C) describe activities common to help desk service level model and incident management processes;

(D) interpret and clarify different types of incidents, problems, and events submitted in the help desk service model or trouble ticketing system;

(E) describe an operational level agreement (OLA) and the role of the IT support specialist in an OLA;

(F) describe what is meant by escalation and the reasons an incident may be escalated;

(G) identify and apply relevant system updates for supported devices; and

(H) describe service and support center metrics, including a service level target and the IT support specialist's role in monitoring and reviewing data related to these metrics.

(5) The student describes and applies best practices for the safe, ethical, and legal use of resources and information. The student is expected to:

(A) demonstrate and describe positive digital citizenship and acceptable use policy when using digital resources;

(B) describe best practices for creating passwords such as increasing password length and password complexity, enforcing

password blacklists, resetting passwords, limiting password entry attempts, and using multi-factor authentication;

(C) examine, describe, and demonstrate the use of guidelines for using media, information, and applications protected by copyright;

(D) compare and explain copyright, fair use, public domain, and Creative Commons licensing;

(E) identify and apply licensing guidelines for software, media, and other resources;

(F) explain the importance and uses of encryption;

(G) describe and demonstrate best practices for handling confidential information;

(H) analyze cyber threats and social engineering vulnerabilities and discuss ways to prevent them;

(I) describe various types of security policies and summarize the importance of physical security and logical security measures;

(J) explain the importance of reporting security compromises such as addressing prohibited content and activity; and

(K) identify and demonstrate appropriate data destruction and disposal methods relevant to a given scenario.

(6) The student applies foundational knowledge and skills for the installation, configuration, operation, and maintenance of desktops and workstations. The student is expected to:

(A) explain the procedure used to install and configure motherboards, central processing units (CPUs), and add-on cards relevant to a given scenario such as a custom personal computer configuration to meet customer specifications;

(B) describe how to implement security best practices to secure a workstation, including software-based computer protection tools such as software firewalls, antivirus software, and anti-spyware;

(C) demonstrate how to identify symptoms or error codes, including no power, no POST, no BOOT, and no video, that indicate device issues and explain how to troubleshoot symptoms or error codes;

(D) describe the process used to install, troubleshoot, and replace random-access memory (RAM) types and data storage;

(E) describe how to troubleshoot, clean, repair, or replace internal components, including heat sink units and thermal paste, exhaust vents and fans, power supply units, power adapters, batteries, wireless elements, and wireless wide area network (WWAN) components;

(F) explain the importance of conducting periodic maintenance, including both physical and electronic cleaning, disk checks, routine reboots, data dumps, and testing; and

(G) describe and demonstrate how to prevent, detect, and remove malware using appropriate tools and methods.

(7) The student applies foundational knowledge and skills about the installation, configuration, operation, and maintenance of operating systems (OS) and software. The student is expected to:

(A) describe and demonstrate the use of OS features and tools relevant to given scenarios;

(B) describe and demonstrate the use of OS utilities relevant to given scenarios;

(C) execute OS command-line tools such as ipconfig, netstat, dir, nbstat;

(D) troubleshoot and document OS problems relevant to a given scenario;

(E) demonstrate how to use features and tools of various operating systems properly;

(F) troubleshoot and document problems in various operating systems; and

(G) explain database concepts and the purpose of a database.

(8) The student installs, configures, operates, maintains, and troubleshoots issues related to peripheral devices relevant to a given scenario. The student is expected to:

(A) explain and demonstrate how to install, configure, maintain, and troubleshoot storage devices;

(B) explain and demonstrate how to install, configure, maintain, and troubleshoot printers, copiers, and scanners, including small office home office (SOHO) multifunction devices and printers;

(C) explain and demonstrate how to install, configure, maintain, and troubleshoot video projectors and video displays; and

(D) explain and demonstrate how to install, configure, maintain, and troubleshoot multimedia devices such as sound cards, speakers, microphones, and webcams.

(9) The student monitors current issues related to the installation, configuration, operation, and maintenance of laptops, tablets, and other mobile devices, including internet of things (IoT) devices. The student is expected to:

(A) explain and demonstrate how to install and configure laptop and netbook hardware to meet customer specifications;

(B) explain and demonstrate how to install components within the display of a laptop;

(C) explain and demonstrate how to connect and configure accessories and ports of mobile devices;

(D) analyze and apply methods used to secure mobile devices;

(E) configure mobile device network connectivity and application support;

(F) demonstrate proper methods to perform mobile device synchronization such as synchronizing information to a laptop or desktop computer; and

(G) explain and demonstrate how to troubleshoot issues relevant to mobile devices, OS, and applications.

(10) The student troubleshoots issues with wired and wireless networks and cloud computing resources. The student is expected to:

(A) explain and demonstrate how to install, configure, and secure a wired network;

(B) explain and demonstrate how to install, configure, and secure a wireless network;

(C) compare wireless security protocols and authentication methods;

(D) analyze, describe, and troubleshoot wired and wireless network problems;

(E) demonstrate the use of appropriate networking tools to fix network issues safely;

(F) explain how computing devices such as laptops and cell phones connect and share data;

(G) describe the components of cloud-computing architectures and features of cloud-computing platforms; and

(H) analyze, describe, and troubleshoot cloud computing resources.

§127.696. *Engineering Applications of Computer Science Principles (One Credit), Adopted 2025.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 9-12. Prerequisite: Algebra I. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology career cluster focuses on the design, development, support, and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialists and network analysts.

(3) Engineering Applications of Computer Science Principles teaches rigorous engineering design practices, engineering habits of mind, and the foundational tools of computer science. Students apply core computer science principles to solve engineering design challenges that cannot be solved without such knowledge and skills. Students use a variety of computer software and hardware applications to complete projects.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) cooperate, contribute, and collaborate as a member of a group to attain agreement and achieve a collective outcome;

(B) present written and oral communication in a clear, concise, and effective manner;

(C) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results;

(D) identify tasks and complete tasks with the highest standards to ensure quality products and services; and

(E) analyze cost savings by using a simulation to run experiments before committing more resources.

(2) The student applies concepts of critical thinking and problem solving to engineering applications in computer science. The student is expected to:

(A) identify, analyze, and discuss elements of an engineering problem to develop creative and innovative solutions;

(B) identify, analyze, and discuss the elements and structure of a programming problem to develop creative and innovative solutions;

(C) identify and discuss pertinent information from a customer and existing program for solving a problem;

(D) compare and discuss alternatives to a solution using a variety of problem-solving and critical-thinking skills; and

(E) conduct research to gather technical information necessary for decision making.

(3) The student conducts computer science and engineering laboratory activities using safe and environmentally appropriate practices. The student is expected to:

(A) identify and demonstrate safe practices during hands-on cutting and building activities during computer science and engineering laboratory activities;

(B) identify and demonstrate safe use and storage of electrical components; and

(C) identify and demonstrate appropriate use and conservation of resources, including disposal, reuse, or recycling of materials.

(4) The student applies ethical considerations in designing solutions. The student is expected to:

(A) define and evaluate constraints pertaining to a problem;

(B) identify safety considerations in designing engineering solutions with respect to the system, engineer, and user; and

(C) investigate and explain the importance and application of relevant legal and ethical concepts in computer science such as intellectual property, use of open-source software, attribution, patents, and trademarks.

(5) The student demonstrates an understanding of the structured methods used to collect and analyze information about customer needs. The student is expected to:

(A) analyze information provided by the customer to identify customer needs;

(B) create a process flow diagram based on customer needs to generate ideas for potential user actions, product functions, and design opportunities;

(C) develop a flowchart for a program using the results of a process flow diagram;

(D) create a target specifications table;

(E) identify and describe similar existing solutions; and

(F) construct a functional model based on customer needs to generate ideas for potential user actions, product functions, and design opportunities.

(6) The student develops a user interface and supplemental instructions. The student is expected to:

(A) identify essential tasks to be completed by the user;

(B) identify points of potential confusion or unexpected input by the user;

(C) design a software or user interface that clearly communicates to the user how to complete desired tasks;

(D) develop supplemental user instructions to inform the user of items that cannot be incorporated into an interface such as how to start the program or frequently asked questions;

(E) test a program and the program instructions with an individual who is not familiar with the project;

(F) evaluate and discuss feedback and results from new user testing;

(G) improve and refine a program and the program instructions based on feedback and results of testing; and

(H) re-test a program and the program instructions as necessary after modifications have been made in response to testing and identify any next steps.

(7) The student systematically reverse engineers a product, examines ways to improve the product, and identifies the type of re-design required to make that improvement. The student is expected to:

(A) write and perform tests, including break testing, for an existing program to determine functionality;

(B) describe unexpected findings from deconstructing existing code;

(C) examine and discuss relevant software libraries to determine their uses and functionality;

(D) construct a flowchart for an existing program;

(E) compare a program's current functionality to the customer's needs;

(F) identify and add missing customer specifications or needs to a program's flowchart;

(G) develop and explain new code that includes customer specifications or improves a product; and

(H) compare and discuss the predicted versus actual functionality of a product to generate ideas for redesign.

(8) The student applies concept generation and selection skills. The student is expected to:

(A) create and explain a black box and functional model of a system;

(B) implement brainstorming, mind mapping, concept sketching, and gallery walk activities to produce new ideas; and

(C) apply concept selection techniques such as a Pugh chart or a weighted decision matrix to design decisions.

(9) The student develops and applies engineering design process skills. The student is expected to:

(A) select and use appropriate tools and techniques to support design activities;

(B) report information about software design solutions in an engineering notebook;

(C) develop, test, and refine programming concepts throughout the development process;

(D) interpret and use an electrical diagram to build a circuit;

(E) create a circuit using a microcontroller, a breadboard, and multiple components;

(F) explain and apply the design process from different starting points by beginning with a baseline design;

(G) use a model or simulation which represents phenomena and mimics real-world events to develop and test hardware;

(H) critique and explain the usefulness and limitations of certain models;

(I) develop a prototype solution; test the prototype solution against requirements, constraints, and specifications; and refine the prototype solution; and

(J) report and describe a product's final design after the prototyping phase.

(10) The student applies mathematics and algorithms in programs. The student is expected to:

(A) apply mathematical concepts from algebra, geometry, trigonometry, and calculus to calculate the angle of a joint;

(B) apply mathematical calculations cyclically in a program using algorithms; and

(C) evaluate and verify algorithms for appropriateness and efficiency.

(11) The student develops computer programs to support design solutions. The student is expected to:

(A) design and explain software interfaces that communicate with hardware;

(B) identify and apply relevant concepts from computer science, science, and mathematics such as functions, electricity, and mechanics; and

(C) employ abstraction in a program by representing numerical sensor readouts distance and brightness ranges in more intuitive variables and functions.

(12) The student develops and applies computer science skills. The student is expected to:

(A) integrate small discrete programs into a larger complete program solution using systems-thinking skills;

(B) use intuitive variable names correctly and add comments to code to improve readability;

(C) employ abstraction in a program by representing images as data arrays and representing numerical tone frequencies as variables;

(D) convert image information into the correct data type necessary for given library functions;

(E) develop an algorithm that includes logic such as "while" and "if" to accept user trackbar input and display image changes in real time;

(F) develop flowcharts, pseudocode, and commented code to document and explain software design solutions;

(G) design software interfaces that communicate with users and hardware;

(H) employ abstraction to program to an interface, treating imported code as a "black box";

(I) employ abstraction by representing a joint as four points in a plane; and



(J) select and apply correct programming vocabulary and programming skills during program development.

(13) The student develops and uses computer programs to process data and information to gain insight and discover connections to support design solutions. The student is expected to:

(A) explain how to organize complex image and video data for processing;

(B) analyze complex data to make decisions and instruct users; and

(C) develop programs that use incoming data and algorithms to create output data, information, and commands.

§127.697. Geographic Information Systems (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Principles of Art, Audio/Video Technology, Principles of Information Technology, Physics for Engineers, or Principles of Applied Engineering. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology career cluster focuses on the design, development, support, and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) The Geographic Information Systems (GIS) course employs an analytic process using industry standard software to find trends and patterns in collected data. Whether collecting data first-hand or from reputable websites, GIS aims to use scientific methods to find solutions to various problems and issues.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) produce effective written and oral communication;

(B) describe and demonstrate appropriate verbal and nonverbal communication skills;

(C) describe employers' expectations, appropriate work habits, and good citizenship skills;

(D) identify career development and opportunities in the GIS industry and related industries;

(E) identify and apply competencies related to resources, information, and systems of operation in the geographical information technology industry;

(F) explain and discuss the responsibilities of workers and employers to promote safety and health in the workplace and the rights of workers to a secure workplace;

(G) identify and explain the appropriate use of types of personal protective equipment used in the GIS industry; and

(H) explain and give examples of safety and health training requirements specified by standard setting organizations.

(2) The student demonstrates knowledge and appropriate use of computer hardware components and software programs and examines how hardware and software are interrelated. The student is expected to:

(A) use operating systems, software applications, and communication and networking components appropriately;

(B) compare and appropriately use various input, processing, output, and primary/secondary storage devices;

(C) evaluate and select software based on quality, appropriateness, effectiveness, and efficiency; and

(D) solve digital file format and cross platform connectivity compatibility issues.

(3) The student uses data input skills. The student is expected to:

(A) incorporate into a product and use a variety of input devices such as keyboard, scanner, or mouse appropriately; and

(B) use digital keyboarding standards for the input of data.

(4) The student demonstrates knowledge and understanding of what GIS is and the use of GIS technology in different career fields. The student is expected to:

(A) identify historical and contemporary developments in GIS;

(B) describe the basic components of GIS; and

(C) identify appropriate application of GIS technologies in different career fields.

(5) The student demonstrates knowledge and appropriate use of database software. The student is expected to:

(A) design and construct a relational database from a geographic data model using a database software;

(B) use joins, hyperlinks, and relational linking appropriately within a database;

(C) convert data into a data depiction using classifications; and

(D) transfer data from different sources into a database for storage and retrieval.

(6) The student demonstrates knowledge and appropriate use of spatial databases and sources. The student is expected to:

(A) identify and use appropriately various spatial databases and sources such as digital terrain models, digital orthophoto quadrangles, geographic databases, land use and land cover data, digital imagery, hydrographic spatial data, and demographic data; and

(B) describe and demonstrate appropriate use of spatial analysis.

(7) The student demonstrates knowledge and appropriate use of GIS software. The student is expected to:

(A) determine the appropriate software tool from GIS to use for a given task or project;

(B) create queries and spatial queries for finding features, borders, centroids, and networks and determining distance, length, and surface measurements and shapes;

(C) describe characteristics of maps and spatial data; and

(D) identify and use geographical scales, coordinates, and specific map projections.

(8) The student demonstrates knowledge and appropriate use of GIS data collection devices. The student is expected to:

(A) plan and conduct supervised GIS and Global Positioning System (GPS) experiences;

(B) initialize and prepare a GPS receiver for data collection;

(C) collect geographical coordinates from a GPS receiver; and

(D) transfer data from a GPS device to a personal computer.

(9) The student acquires electronic information in a variety of formats. The student is expected to:

(A) collect electronic information in various formats, including text, audio, video, and graphics; and

(B) gather authentic data from a variety of electronic sources to use for individual and group GIS projects.

(10) The student uses appropriate computer-based productivity tools to create and modify solutions to problems. The student is expected to:

(A) explain project management guidelines for designing and developing GIS projects; and

(B) design solutions for a project using visual organizers such as flowcharts or schematic drawings.

(11) The student produces a product using a variety of media. The student is expected to:

(A) publish information in a variety of formats, including hard copies and digital formats; and

(B) prepare a presentation of GIS information using graphs, charts, maps, and presentation software.

(12) The student examines GIS maps, reports, and graphs. The student is expected to:

(A) explain industry-standard legends used in GIS;

(B) describe symbols, scaling, and other map elements used in GIS;

(C) generate GIS reports and graphs; and

(D) create maps using a variety of map display types such as choropleth, heat maps, dot density maps, topographic maps, or graduated symbols maps.

§127.698. Raster-Based Geographic Information Systems (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Geographic Information Systems. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology career cluster focuses on the design, development, support, and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) In Raster-Based Geographic Information Systems (GIS), students study local problems; acquire information, including images or aerial photographs; process the acquired data; and merge the acquired data with vector data. Students plan, conduct, and present solutions for locally based problems.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) produce effective written and oral communication;

(B) describe and demonstrate appropriate verbal and nonverbal communication skills;

(C) describe and demonstrate various workplace expectations, including proper work attire and professional conduct;

(D) describe time-management skills, including prioritizing tasks, following schedules, and tending to goal-relevant activities to optimize efficiency and results;

(E) explain the importance of punctuality, dependability, reliability, and responsibility in reporting for duty and performing assigned tasks as directed;

(F) explain and discuss the responsibilities of workers and employers to promote safety and health in the workplace and the rights of workers to a secure workplace;

(G) identify and explain the appropriate use of types of personal protective equipment used in the GIS industry; and

(H) explain and give examples of safety and health training requirements specified by standard setting organizations.

(2) The student demonstrates knowledge of the GIS field and related careers. The student is expected to:

(A) identify employment and career opportunities in GIS-related fields;

(B) identify and explore career preparation learning experiences, including job shadowing, mentoring, apprenticeship training, and preparation programs;

(C) identify industry certifications for GIS-related careers, including careers related to raster-based GIS; and

(D) discuss and analyze ethical issues related to GIS and technology and incorporate proper ethics in submitted projects.

(3) The student explores various roles in team projects. The student is expected to:

(A) explain the importance of teamwork in the field of GIS;

(B) describe principles of effective teamwork, including collaboration and conflict resolution; and

(C) explain common characteristics of strong team leaders and team members.

(4) The student investigates the history and use of aerial photography. The student is expected to:

(A) explain fundamental principles of cameras and lenses as they pertain to GIS and aerial photography;

(B) research and explain the history of aerial photography, including aerial platforms;

(C) explain various uses of aerial photography;

(D) compare vertical and oblique aerial photography; and

(E) identify cities, bridges, shorelines, roads and other important features in aerial photos.

(5) The student develops an understanding of electromagnetic and thermal radiation. The student is expected to:

(A) explain how forms of radiation propagate through space and interact with matter;

(B) research and describe the behavior of waves, including refraction, scattering, absorption, and reflection, in relation to radiation;

(C) describe the properties and laws of thermal radiation;

(D) compare the particle and wave models of electromagnetic energy;

(E) differentiate maps based on electromagnetic versus thermal radiation imagery; and

(F) evaluate whether electromagnetic or thermal radiation imagery is appropriate based on the conditions.

(6) The student explores active and passive microwave remote sensing. The student is expected to:

(A) compare active and passive microwave remote sensing;

(B) explain geographic characteristics, including surface roughness, moisture content, vegetation, backscatter and biomass, and urban structures, detected by remote sensing images; and

(C) provide a detailed analysis of radar images.

(7) The student learns the functions and applications of the tools, equipment, and materials used in GIS and raster-based analysis. The student is expected to:

(A) describe how to use raster-based software;

(B) download spatial data and raster images and re-project the data and images to match the Digital Orthophoto Quadrangle (DOQ) or Digital Orthophoto Quarter Quadrangle (DOQQ);

(C) identify remote sensing equipment and describe the difference between the Global Positioning System (GPS) and the Global Navigation Satellite System (GLONASS);

(D) describe GPS measurements and perform measurements with handheld GPS devices using GPS or GLONASS systems; and

(E) compare the advantages, disadvantages, and limitations of remote or unmanned sensing.

(8) The student uses scientific practices in imagery analysis. The student is expected to:

(A) plan and implement investigative procedures, including asking questions, formulating testable hypotheses, and selecting, handling, and maintaining appropriate equipment and technology;

(B) collect GIS data;

(C) organize, analyze, evaluate, make inferences, and predict trends from GIS data; and

(D) communicate valid conclusions using appropriate GIS vocabulary, supportive maps, summaries, oral reports, and technology-based reports.

(9) The student uses project-management skills to research and analyze locally based problems. The student is expected to:

(A) identify and collect data necessary to evaluate a local problem, including defining the problem and identifying locations of the concern;

(B) develop a plan and project schedule for completion of a project developed to address a local concern using raster-based GIS technology;

(C) create a GIS map to illustrate a problem using remote sensing images gathered from sites such as the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administrations, and United States Geological Survey;

(D) evaluate GIS map features to identify solutions to a problem;

(E) develop solutions to minimize, reverse, or solve problem using raster-based GIS technology; and

(F) organize and present findings related to a local problem in a final report or portfolio with data and solutions generated using raster-based GIS technology.

§127.699. Spatial Technology and Remote Sensing (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Geographic Information Systems and Raster-Based Geographic Information Systems. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Information Technology career cluster focuses on the design, development, support, and management of hardware, software, multimedia, and systems integration services. This career cluster includes occupations ranging from software developer and programmer to cybersecurity specialist and network analyst.

(3) In Spatial Technology and Remote Sensing, students receive instruction in industry standard geospatial extension software and geospatial tools, including global positioning systems (GPS), and training in project management and problem solving related to geographic information systems (GIS).

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) produce effective written and oral communication;

(B) describe and demonstrate effective verbal and non-verbal communication skills;

(C) describe workplace expectations, including appropriate work attire and professional conduct;

(D) describe and demonstrate principles of effective teamwork, including collaboration and conflict resolution;

(E) describe and demonstrate effective use of time-management skills, including prioritizing tasks, following schedules, and tending to goal-relevant activities to optimize efficiency and results;

(F) explain the importance of punctuality, dependability, reliability, and responsibility in reporting for duty and performing assigned tasks with little or no direction; and

(G) identify consequences and appropriate actions related to discrimination, harassment, and inequality in the workplace.

(2) The student demonstrates knowledge of the GIS field and GIS-related careers. The student is expected to:

(A) identify employment and career opportunities in spatial technology and remote sensing related GIS fields;

(B) describe and explore career preparation learning experiences, including job shadowing, mentoring, apprenticeship training, and preparation programs;

(C) identify industry certifications for GIS-related careers, including careers that use or benefit from spatial technology; and

(D) analyze and discuss ethical issues related to the field of spatial technology and remote sensing technology and spatial technology and remote sensing technology projects.

(3) The student applies basic GIS software knowledge and skills to explore the use of various geographic projections in GIS software. The student is expected to:

(A) identify and use Mercator map projection;

(B) identify and use Albers conic map projection; and

(C) research and explain the evolution of and need for different map projections.

(4) The student explores the application of GPS technology. The student is expected to:

(A) define and use data terminology related to GPS;

(B) identify and use appropriately GPS receiver components;

(C) describe various applications of GPS coordinates such as locating fire hydrants, extinguishers, lighting, and parking lots; and

(D) compare the accuracy of GPS coordinates from different receivers such as smartphones, tablets, and GPS handheld devices.

(5) The student demonstrates knowledge and understanding of the types and components of unmanned remote sensing platforms. The student is expected to:

(A) identify major components of aerial, terrestrial, and submersible remote sensing platforms;

(B) determine the most appropriate remote sensing platform to use based on various conditions;

(C) differentiate the types of sensing systems used by each type of platform, including active, passive, spectrometer, radar, LiDAR, scatter meter, and laser altimeter platforms; and

(D) compare situations in which different unmanned remote sensing platforms and sensing systems might be used.

(6) The student demonstrates skills related to GIS data analysis. The student is expected to:

(A) evaluate findings and potential problems using GIS data;

(B) create models that represent collected GIS data;

(C) create, query, map, and analyze cell-based raster data; and

(D) analyze density, distance, and proximity of various data points using spatial analyst tools.

(7) The student analyzes geospatial socioeconomic data to create three-dimensional maps to demonstrate findings. The student is expected to:

(A) identify key sources of and gather and organize geospatial socioeconomic data;

(B) plan, organize, and create thematic maps;

(C) convert two-dimensional themes to a three-dimensional map to demonstrate features, distributions, and themes; and

(D) interpret, draw conclusions about, and justify findings related to geospatial socioeconomic data.

(8) The student uses spatial technology to develop and analyze a location map. The student is expected to:

(A) identify and collect data using GPS and unmanned systems and identify the boundaries and topography of a location;

(B) analyze how the location of a community impacts resources and hardships such as jobs or traffic in the community;

(C) create a map of a location that includes buildings and facilities, adjacent streets, and transportation sites using GIS software; and

(D) develop a map that includes categories for a facility's features such as restrooms, spaces allocated for core activities, emergency equipment, and excavation routes.

(9) The student documents spatial technology knowledge and skills. The student is expected to:

(A) create a spatial technology and remote sensing portfolio that includes attainment of technical skill competencies and samples of work such as location maps and spatial technology and remote sensing-based reports; and

(B) present a portfolio to peers or interested stakeholders.

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 December 9, 2024.

TRD-202405920

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 19, 2025

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



## SUBCHAPTER N. LAW AND PUBLIC SERVICE

### 19 TAC §127.773

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which permits the SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to adopt rules to ensure that a student may comply with the curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including

a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.773. Legal Research and Writing (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Court Systems and Practices. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law and Public Service Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Legal Research and Writing provides an introduction to the study and practice of legal writing and research. This course is designed to introduce students to the methods and tools used to conduct legal research, develop and frame legal arguments, produce legal writings such as briefs, memorandums, and other legal documents, study U.S. Constitutional law, and prepare for appellate argument(s).

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal and team goals every day, and ethical use of technology.

(2) The student conducts legal research. The student is expected to:

(A) plan a legal research strategy;

(B) access print and online research materials to find and analyze case law;

(C) describe the difference between mandatory and persuasive authority;

(D) research mandatory and persuasive case history using online databases such as Lexis-Nexis;

(E) explain how to shepardize case law;

(F) critique other's legal writing(s) to determine whether cited case law and other legal sources were correctly referenced and relied upon for precedential holdings;

(G) evaluate and apply concepts found in Bluebook citation rules to one's writing.

(3) The student prepares legal arguments. The student is expected to:

- (A) read and analyze case law;
- (B) read and analyze case procedural history;
- (C) apply legal precedent to current legal issues; and
- (D) develop arguments supported by case law research.

(4) The student understands and prepares legal documents. The student is expected to:

(A) use and interpret legal reference documents such as the Bluebook to follow and apply requirements for legal writing and citations;

(B) prepare legal briefs that include standard elements, including an introduction and table of authorities;

(C) prepare memorandums that follow a standard legal format; and

(D) prepare other legal documents such as demand letters and pleadings.

(5) The student studies and analyzes U.S. Constitutional law. The student is expected to:

(A) analyze the relationship between the U.S. Constitution, Common Law, and state and local law(s);

(B) analyze the legal, social, and historical implications of court decisions affecting the interpretation of the U.S. Constitution;

(C) predict possible outcomes of future cases and frame arguments in ways that are likely to garner the support of the judiciary;

(D) critique cases related to U.S. Constitutional law and other current legal issues such free exercise clause, establishment clause, due process, and equal protection; and

(E) critique cases related to current legal issues.

(6) The student participates in a class moot court simulation. The student is expected to:

(A) research case law on a current legal issue;

(B) read and evaluate appellant, respondent, and amici briefs associated with the chosen case;

(C) write an appellate brief; and

(D) prepare an oral argument and respond to questions during the presentation of the argument.

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

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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 87. OMBUDSMAN SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§87.101, 87.103, 87.105, 87.107, 87.109, 87.111, 87.113, 87.115, 87.117, 87.119, 87.201, 87.203, 87.205, 87.207, 87.209, 87.211, 87.213, 87.215, 87.217, 87.219, 87.301, 87.303, 87.305, 87.307, 87.309, 87.311, 87.313, 87.315, 87.317, 87.319, 87.321, 87.401, 87.403, 87.405, 87.407, 87.409, 87.411, 87.413, 87.415, 87.417, 87.419, 87.501, 87.503, 87.505, 87.507, 87.509, 87.511, 87.513, 87.515, 87.517, and 87.519; and new §§87.1, 87.3, 87.5, 87.7, 87.15, 87.17, 87.19, 87.21, 87.23, 87.25, 87.27, 87.29, 87.31, 87.33, 87.35, 87.41, 87.43, 87.51, 87.61, 87.71, 87.73, and 87.81.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement changes made to Texas Government Code, Chapter 531, Subchapter Y, by House Bill (H.B.) 3462, 88th Legislature, Regular Session, 2023. H.B. 3462 consolidated ombudsman statutes and clarified duties and procedures for the Texas Health and Human Services (HHS) Office of the Ombudsman (OO), including ombudsman programs for children and youth in foster care, managed care assistance, behavioral health access to care, and individuals with an intellectual or developmental disability.

The proposal reorganizes the rules to ensure consistency with legislative changes, groups together related subjects to facilitate navigation within the rules, and removes duplicative language.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapters A - E, containing §§87.101, 87.103, 87.105, 87.107, 87.109, 87.111, 87.113, 87.115, 87.117, 87.119, 87.201, 87.203, 87.205, 87.207, 87.209, 87.211, 87.213, 87.215, 87.217, 87.219, 87.301, 87.303, 87.305, 87.307, 87.309, 87.311, 87.313, 87.315, 87.317, 87.319, 87.321, 87.401, 87.403, 87.405, 87.407, 87.409, 87.411, 87.413, 87.415, 87.417, 87.419, 87.501, 87.503, 87.505, 87.507, 87.509, 87.511, 87.513, 87.515, 87.517, and 87.519, in 26 Texas Administrative Code (TAC) Chapter 87, allow new rules to be proposed in 26 TAC Chapter 87. The new rules, in new Subchapters A - G, update and restructure the rules in accordance with legislative changes.

Proposed new Subchapter A, Purpose, Definitions, and Establishment of Ombudsman Programs, contains the rules listed below.

Proposed new §87.1, Purpose, clarifies the purpose of the rule chapter as the implementation of ombudsman programs.

Proposed new §87.3, Definitions, defines terms used in the chapter and adds a definition for "ombudsman program."

Proposed new §87.5, Establishment of Ombudsman Programs and Appointment of Ombudsman, specifies the requirements for the HHSC Executive Commissioner to establish and appoint an ombudsman for each ombudsman program.

Proposed new §87.7, Conflict of Interest, sets out the prohibition for a person to serve as an ombudsman based on specific statutory criteria.

Proposed new Subchapter B, Provisions Common to All Ombudsman Programs, contains the rules listed below.

Proposed new §87.15, Creation of the Office and Ombudsman Standards, sets out OO's primary responsibilities. It notes how OO fits into HHSC's customer service process and identifies standards of government ombudsman offices.

Proposed new §87.17, Data and Reports, specifies OO's data and reporting requirements including a new annual reporting requirement.

Proposed new §87.19, Duties and Statewide Procedures, specifies and standardizes statutorily required duties for OO including those duties required to be performed in conjunction with HHSC or the Texas Department of Family and Protective Services (DFPS).

Proposed new §87.21, Investigation of Unreported Complaints, specifies that, during an investigation, the discovery of an unreported violation of agency rules and policies must result in a new investigation for the unreported violation.

Proposed new §87.23, Confidentiality and Communications Related to Complaints, specifies that ombudsman records related to a complaint are confidential and that reports relating to a complaint investigation may be made public after a complaint is resolved.

Proposed new §87.25, Contact information, specifies where information for contacting OO, including the four specific ombudsman programs, must be maintained.

Proposed new §87.27, Referrals to Other HHS Offices or Other Entities, outlines the various referrals OO staff may make to other HHS offices and other entities, depending on the subject of the contact.

Proposed new §87.29, Intake of Contacts, outlines actions taken by OO staff when a contact is first received.

Proposed new §87.31, Investigation of Complaints, specifies that OO staff review complaints to determine if policy was followed by HHS staff and vendors contracted to provide services.

Proposed new §87.33, Substantiating and Closing Complaints, notes that OO staff determine if a complaint is substantiated after an investigation is completed. Once completed, consumers are notified of the outcome of a complaint.

Proposed new §87.35, Contact Follow-up, specifies timeframes for responses to complaints and contacts, and authorizes structured communication plans to address conduct by a consumer or contact that could hinder an investigation.

Proposed new Subchapter C, Provisions Directing HHSC and DFPS, contains the rules listed below.

Proposed new §87.41, Access to Information, requires HHSC and DFPS to provide an ombudsman access to records for the investigation of a complaint.

Proposed new §87.43, Retaliation Prohibited, prohibits HHSC or DFPS from retaliating against any employee or any complainant who makes a complaint in good faith.

Proposed new Subchapter D, Ombudsman for Managed Care Assistance, contains the rule listed below.

Proposed new §87.51, Creation of the Program and Populations Served, specifies that this program is responsible for assisting persons experiencing barriers in the Medicaid application and enrollment process.

Proposed new Subchapter E, Ombudsman for Children and Youth in Foster Care, contains the rule listed below.

Proposed new §87.61, Creation of the Program and Populations Served, specifies that this program is responsible for assisting children and youth in the conservatorship of DFPS.

Proposed new Subchapter F, Ombudsman for Behavioral Health Access to Care, contains the rules listed below.

Proposed new §87.71, Creation of the Program and Populations Served, specifies that this program is responsible for assisting consumers and behavioral health care providers resolve issues related to access to behavioral health care.

Proposed new §87.73, Report, requires this program to collaborate with Texas Department of Insurance to issue an annual report on the status of rights for mental health and substance use disorder benefits and resolved and unresolved parity complaints.

Proposed new Subchapter G, Ombudsman for Individuals with an Intellectual or Developmental Disability (IDD), contains the rule listed below.

Proposed new §87.81, Creation of the Program and Populations Served, specifies that this program serves as an impartial party to assist individuals with IDD, as they navigate issues related to seeking IDD-related services.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will expand and 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 since the rules do not apply to small businesses, micro-businesses, or rural communities.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

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

## PUBLIC BENEFIT AND COSTS

Joel Schwartz, HHS Ombudsman, has determined that for each year of the first five years the rules are in effect, the public benefit will be a more complete understanding of the HHS consumer complaint process and the role of the HHS Office of the Ombudsman.

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 there is no cost to access Ombudsman services.

## 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 HHS Office of the Ombudsman, P.O. Box 13247, Mail Code H-700, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or by e-mail to [Ombudsman\\_Rules@hhs.texas.gov](mailto:Ombudsman_Rules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R012" in the subject line.

## SUBCHAPTER A. PURPOSE, DEFINITIONS, AND ESTABLISHMENT OF OMBUDSMAN PROGRAMS

### 26 TAC §§87.1, 87.3, 87.5, 87.7

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new sections implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

#### §87.1. Purpose.

The purpose of this chapter is to implement HHSC ombudsman programs, as established by Texas Government Code, Title 4, Chapter 531, Subchapter Y.

#### §87.3. Definitions.

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

(1) AMH--Adult Mental Health program. The home and community-based services adult mental health program, operated under a Texas Medicaid state plan amendment and 26 Texas Administrative Code Chapter 307, Subchapter B (relating to Home and Community-Based Services--Adult Mental Health Program).

(2) Compact with Texans--A document that describes the Texas Health and Human Services Commission's services, principles, and process for filing complaints and requesting information.

(3) Complaint--Any expression of dissatisfaction by a consumer of an HHS program or service about HHS benefits or services. Complaints do not include the following, which are handled through other processes:

(A) allegations of abuse, neglect, or exploitation;  
(B) allegations of discrimination or other civil rights violations;

(C) allegations of fraud, waste, or abuse;  
(D) requests for Fair Hearings or administrative appeals; or

(E) concerns about regulated individuals and entities.

(4) Consumer--An applicant or a client of HHS programs, as well as a member of the public seeking information about HHS programs.

(5) Contact--A written or oral inquiry or complaint from a consumer, individual, or LAR about HHS programs or services.

(6) DFPS--Texas Department of Family and Protective Services. The state agency established by Texas Human Resources Code Chapter 40 and responsible for administration of Child Protective Services.

(7) Dispute resolution services--An independent and impartial review of a program's actions regarding an HHS consumer complaint that has not been resolved to the consumer's satisfaction.

(8) FCO--Foster Care Ombudsman. The Ombudsman for Children and Youth in Foster Care.

(9) HCS--The Home and Community-based Services Program. A program operated by HHSC in accordance with §1915(c) of the Social Security Act.

(10) Health care provider--A physician, pharmacist, or other licensed provider who is authorized under state law to provide health care services, or a credentialed professional who provides behavioral health, mental health, or substance use disorder services.

(11) HHS--Texas Health and Human Services. The system for providing or otherwise administering health and human services in this state established in Texas Government Code Chapter 521, comprised of HHSC and the Texas Department of State Health Services.



(12) HHSC--Texas Health and Human Services Commission. The agency established by Texas Government Code Chapter 523.

(13) IDD--Intellectual or developmental disability.

(14) IDDO--The Ombudsman for individuals with an intellectual or developmental disability.

(15) Individual--A person seeking or receiving IDD services.

(16) Inquiry--A request by a consumer, individual, or LAR for information about HHS programs or services.

(17) LAR--Legally authorized representative. A person legally authorized to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(18) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code §533.0356(a).

(19) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority in accordance with Texas Health and Safety Code §533A.035(a).

(20) LMHA--Local mental health authority. An entity designated as the local mental health authority in accordance with Texas Health and Safety Code §533.035(a).

(21) MCO--Managed care organization. An entity contracted with HHSC to provide health care services in a Medicaid managed care program.

(22) OBH--Ombudsman for Behavioral Health Access to Care.

(23) OO--Office of the Ombudsman. The HHSC office with authority and responsibility over the HHS system in performing ombudsman functions.

(24) Ombudsman program--An ombudsman program administered by HHSC as established by Texas Government Code §531.9912.

(25) OMCAT--Ombudsman Managed Care Assistance Team.

(26) Parity--The requirement outlined in Texas Insurance Code, Chapter 1355, Subchapter F that a health benefit plan provide benefits and coverage for mental health conditions and substance use disorders under the same terms and conditions applicable to the plan's medical and surgical benefits and coverage.

(27) Program provider--A person who has a contract with HHSC to provide HCS or TxHmL services.

(28) Retaliation--A harmful action taken because of, or substantially motivated by, reprisal or revenge in response to a legally protected activity, such as making a good faith complaint.

(29) State hospital--A state mental health facility operated by HHSC.

(30) Substantiated complaint--A complaint for which research clearly indicates HHS policy was violated or HHS expectations were not met.

(31) TxHmL--The Texas Home Living Program. A program operated by HHSC in accordance with §1915(c) of the Social Security Act.

(32) Unable to substantiate a complaint--A complaint for which research does not clearly indicate if HHS policy was violated or HHS expectations were met or not met.

(33) Unsubstantiated complaint--A complaint for which research clearly indicates HHS policy was not violated or HHS expectations were met.

(34) Youth--Children and youth in the conservatorship of DFPS, which ends at age 18.

§87.5. Establishment of Ombudsman Programs and Appointment of Ombudsman.

(a) Texas Government Code §531.9912 requires the following programs to be established by the HHSC executive commissioner:

(1) the HHS office of the ombudsman in accordance with Texas Government Code §531.9915;

(2) the ombudsman for children and youth in foster care in accordance with Texas Government Code §531.9931;

(3) the ombudsman for managed care assistance in accordance with Texas Government Code §531.9932;

(4) the ombudsman for behavioral health access to care in accordance with Texas Government Code §531.9933; and

(5) the ombudsman for individuals with an intellectual or developmental disability in accordance with Texas Government Code §531.9934.

(b) The HHSC executive commissioner appoints an ombudsman for each ombudsman program to serve at the will of the HHSC executive commissioner.

§87.7. Conflict of Interest.

A person is prohibited from serving as ombudsman in an ombudsman program if the person or the person's spouse has a conflict as defined by Texas Government Code §531.9921.

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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TRD-202405854

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 19, 2025

For further information, please call: (512) 706-7281



## SUBCHAPTER B. PROVISIONS COMMON TO ALL OMBUDSMAN PROGRAMS

**26 TAC §§87.15, 87.17, 87.19, 87.21, 87.23, 87.25, 87.27, 87.29, 87.31, 87.33, 87.35**

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Gov-

ernment Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new sections implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.15. Creation of the Office and Ombudsman Standards.

(a) OO is established by Texas Government Code §531.9912 in accordance with Texas Government Code §531.9915.

(1) OO has authority and responsibility over the HHS system in:

(A) providing dispute resolution services;

(B) performing consumer protection and advocacy functions; and

(C) collecting inquiry and complaint data related to the HHS system.

(2) OO is responsible for a standard process for tracking and reporting consumer and individual contacts within the HHS system, including centralized tracking of consumer and individual contacts submitted to field, regional, or other local offices.

(b) HHSC Compact with Texans outlines customer service principles and standards, including a complaint process for consumers and individuals. As part of that process, a consumer is directed to first contact the HHS program for which they have an inquiry or a complaint. If the concern is not resolved to the consumer's satisfaction, the consumer is directed to contact OO. In accordance with HHSC Compact with Texans, OO is committed to providing high quality services in a professional and ethical manner.

(c) In accordance with Texas Government Code §531.9915(b), OO does not have authority to process case actions or overturn HHS program decisions. OO staff also cannot give legal advice.

(d) OO strives to adhere to the United States Ombudsman Association's government ombudsman standards by:

(1) maintaining independence from HHS programs through an organizational structure that has OO report to the HHSC executive commissioner through a separate chain of command from program staff;

(2) remaining impartial by receiving and reviewing each contact in an objective and fair manner, free from bias, and treating all parties without favor or prejudice;

(3) maintaining discretion to keep confidential or release information related to a contact or a complaint investigation, if authorized by a consumer, individual, or LAR to do so; and

(4) providing a credible review process by performing responsibilities in a manner that engenders respect, confidence, and accessibility to all consumers, individuals, and LARs.

(e) The Office of the State Long-term Care Ombudsman is affiliated with the OO. This office is authorized by Texas Human Resources Code Chapter 101a, Subchapter F; 42 United States Code 3058f and 3058g; and 45 Code of Federal Regulations Part 1324. Its purpose is to protect the health, safety, welfare, and rights of people living in nursing facilities and assisted living facilities. Administrative rules for this program can be found in 26 Texas Administrative Code Chapter 88 (relating to State Long-term Care Ombudsman Program). The rules in this chapter do not apply to the State Long-term Care Ombudsman program.

§87.17. Data and Reports.

(a) Data.

(1) OO staff maintain records of inquiries and complaints in the OO primary recordkeeping system.

(2) In accordance with Texas Government Code §531.995, HHSC and DFPS must provide an ombudsman access to the records that relate to a complaint the ombudsman is reviewing or investigating.

(b) Agency Monthly Contact Report (AMCR). In accordance with Texas Government Code §531.9915(d), OO staff compile a monthly report of consumer, individual, and LAR contacts received by HHS programs, including those received by vendors contracted to provide services on behalf of an HHS program. OO submits this report to the HHSC executive commissioner and designated program management staff across the HHS agencies on a periodic basis. OO staff may also provide reporting of program-specific contact data to management teams of HHS programs.

(c) Annual Report.

(1) Each ombudsman must prepare an annual report in accordance with Texas Government Code §531.998.

(2) No later than December 1 of each year the report must be submitted to the governor, the lieutenant governor, the relevant standing committees of the legislature, each member of the legislature, and the HHSC executive commissioner.

(3) The report must be publicly available on the HHSC website.

§87.19. Duties and Statewide Procedures.

(a) An ombudsman serves as an impartial party in assisting persons, including children and youth in DFPS conservatorship, with complaints regarding issues or case-specific activities within the authority and programs of HHSC and DFPS. Each ombudsman has the same duties and procedures.

(b) Statewide procedures. Texas Government Code §531.993(b) requires an ombudsman to develop and implement procedures to:

(1) receive and review complaints and take appropriate action, including:

(A) investigate individual complaints that allege violations of HHSC or DFPS procedures or policies or other violations; and

(B) refer any trends or systemic issues identified in complaints to HHSC or DFPS for resolution;

(2) assist persons, including children and youth in DFPS conservatorship, in making complaints and reporting allegations of abuse, neglect, or exploitation under Texas Human Resources Code Chapter 48;

(3) maintain the confidentiality of an ombudsman's communications and records, records of another person that have been provided to an ombudsman, and communications of another person with an ombudsman; and

(4) inform a person who files a complaint of the results of the ombudsman's investigation of the complaint, including whether the complaint was substantiated, and any corrective action recommended.

(c) Duties performed in collaboration with HHSC or DFPS. Texas Government Code §531.993(b) requires an ombudsman to:

(1) collaborate with HHSC to develop and implement an annual outreach plan to promote awareness of ombudsman programs;

the plan must include how an ombudsman may be contacted, the purpose of an ombudsman, and the services an ombudsman provides; and

(2) collaborate with HHSC or DFPS to identify consequences for any retaliatory action related to a complaint filed with an ombudsman, in accordance with Texas Government Code §531.997.

(d) Final determination report; corrective action. An ombudsman, HHSC, and DFPS have the following duties related to the final determination of a complaint and recommended corrective actions:

(1) an ombudsman, in accordance with Texas Government Code §531.993(b) and (c), must:

(A) issue and file with HHSC or DFPS, a report containing an ombudsman's final determination regarding a complaint and any recommended corrective actions;

(B) include a determination in the report of whether there was wrongdoing or negligence by HHSC or DFPS or the complaint was frivolous or without merit; and

(C) monitor and evaluate the corrective actions taken in response to an ombudsman's recommendation.

(2) HHSC and DFPS, in accordance with Texas Government Code §531.993(c-1), are required to provide written notice to an ombudsman on whether a recommended corrective action was adopted or rejected. If rejected, HHSC or DFPS must include in the notice the reason for the rejection.

(e) Additional duties. In accordance with Texas Government Code §531.993:

(1) an ombudsman must establish a secure form of communication with any person who files a complaint; and

(2) an ombudsman may attend any judicial proceeding related to a complaint filed with the ombudsman program.

#### §87.21. Investigation of Unreported Complaints.

In accordance with Texas Government Code §531.994, if an ombudsman discovers unreported violations of HHSC or DFPS rules and policies during the investigation of a complaint, the ombudsman must open a new investigation for each unreported violation.

#### §87.23. Confidentiality and Communications Related to Complaints.

(a) Confidentiality Requirements. In accordance with Texas Government Code §531.996, and §87.19(b)(3) and (e)(1) of this chapter (relating to Duties and Statewide Procedures):

(1) a person may communicate with an ombudsman relating to a complaint by telephone, mail, electronic mail, or any other means the ombudsman determines to be feasible, secure, and accessible;

(2) the records of an ombudsman relating to a complaint are confidential;

(3) communications with an ombudsman are confidential both during and after an investigation or review of a complaint;

(4) the disclosure of confidential information to an ombudsman does not constitute a waiver of confidentiality; any information disclosed remains confidential and privileged following disclosure;

(5) an ombudsman may communicate with HHSC or DFPS regarding confidential information disclosed to the ombudsman; and

(6) an ombudsman may make reports relating to an investigation of a complaint public after the complaint is resolved; a report

may not include information that identifies an individual complainant, client, parent, employee, or any other person involved in the complaint.

#### (b) Complaint Communications Process.

(1) Except as noted in paragraph (3) of this subsection, before sharing complaint-related information, OO staff verify the identity of the person receiving the information and only share the information with the consumer or individual applying for or receiving services, their LAR, and staff within HHS and DFPS involved in the review of the complaint. With the consent of the consumer or individual or their LAR, OO staff may share complaint information with other appropriate parties who can assist with the issue.

(2) OO staff follow the HHSC policies relating to transmission of complaint data, including use of secure email to encrypt messages that contain an individual's confidential information or protected health information.

(3) In certain instances, state and federal laws and rules and regulations may authorize or require OO staff to contact vendors contracted to provide services on behalf of an agency program and share complaint information with them to address a complaint, without obtaining explicit permission of the individual or their LAR. This is especially relevant for individuals who may be unable to communicate.

#### §87.25. Contact Information.

(a) The OO maintains a public website with information on how to contact the office via phone, online, fax, and mail. The OO develops brochures and other materials that can be distributed to consumers and healthcare providers. Contact information and materials for distribution are also maintained for each ombudsman program listed in §87.3 of this chapter (relating to Definitions).

(b) Each HHS office that provides direct service delivery of programs or services offers a process to a consumer or individual to submit complaints and advises the consumer or individual how to contact OO staff if that office does not resolve the complaint to the consumer's satisfaction. These HHS programs ensure OO contact information is provided on appropriate web pages and in written materials and is available upon request in local offices. This includes communications made to a consumer by a vendor contracted to provide services on behalf of an HHS program.

(c) All residential child-care facilities in which foster youth are placed must display FCO contact information in a location that is easily accessible and offers maximum privacy to the youth. A youth may also contact an FCO in person when FCO staff present to youth in events organized by DFPS or when visiting a residential treatment center or hospital where a youth is placed.

(d) The OBH toll-free number is published in consumer rights handbooks made available at all service locations at state hospitals or LBHAs or LMHAs. Consumers at these facilities also have a right to have all their rights explained verbally--including the right to complain to OBH--within 24 hours of admission.

(e) A LIDDA must post the IDDO toll-free number conspicuously in every program area. IDDO publishes handbooks describing the rights of individuals with IDD, including the right to contact IDDO. HCS and TxHmL program providers, and LIDDAs must inform individuals of their right to complain to IDDO and provide the IDDO toll-free number.

(f) Each MCO must include OMCAT contact information on its member website and in member handbooks.

#### §87.27. Referrals to Other HHS Offices or Other Entities.

(a) OO staff may refer a consumer to the appropriate program area within HHS or DFPS or the appropriate contractor for HHS ser-

VICES IF THE CONSUMER HAS NOT YET ATTEMPTED TO RESOLVE THEIR ISSUE WITH THAT HHS OR DFPS PROGRAM OR CONTRACTOR BEFORE CONTACTING THE OO.

(b) OO staff may refer a consumer or individual to a resource outside the HHS system if the consumer's or individual's issue does not fall within the jurisdiction of HHS.

(c) If a person, other than a youth in foster care or the court-appointed attorney for a youth who is not able to verbalize their concerns, contacts FCO, that person will be referred to the appropriate area for assistance.

(d) If a youth contacts FCO with a complaint that is outside of the scope of FCO's ability to assist, the FCO will offer resources to assist with the issue.

(e) Residents of state supported living centers (SSLCs) or their LARs are referred to the Office of the Independent Ombudsman for SSLCs established by Texas Health and Safety Code, Chapter 555, Subchapter C.

(f) OO staff may refer a consumer, or the consumer's LAR, in the child health plan with a grievance related to health plan providers to the Texas Department of Insurance in accordance with Texas Health and Safety Code, Chapter 62.

(g) All allegations of abuse, neglect, or exploitation are immediately referred to the appropriate entity. OO will always inform a complainant who makes allegations of abuse or neglect that the referral is being made.

#### §87.29. Intake of Contacts.

(a) An ombudsman must give emphasis to assisting a person with an urgent or immediate medical or support need.

(b) A contact received through an online submission is automatically and immediately loaded in the OO primary recordkeeping system and assigned to appropriate OO staff for action.

(c) A contact received by postal mail, fax, or email is uploaded to the primary recordkeeping system and assigned to appropriate OO staff for action within one business day of receipt.

(d) A call received by OO staff is immediately entered in the primary recordkeeping system.

(e) OO publishes on its website a list of commitments OO staff makes to ensure cases are dealt with fairly, efficiently, and effectively. The list also includes commitments OO asks of consumers and LARs to ensure the same objective. Consumers and LARs may hear a verbal summary of the list or receive a written copy.

(f) OO staff use HHSC contracted vendors to provide language interpretation services, when necessary.

(g) When FCO meet a youth in person who has an inquiry or a complaint, they enter the contact in the primary recordkeeping system on the first business day after they return to the FCO office.

(h) When FCO receive calls that include information that give FCO staff reason to suspect abuse or neglect, calls are transferred to the Texas Abuse Hotline operated by DFPS Statewide Intake (SWI). FCO staff assist the youth in making a report. Online reports can be made when hold times warrant.

(i) When FCO receive written submissions that include information that gives FCO reason to suspect abuse or neglect, FCO staff attempt to communicate with the youth by phone. If FCO staff are not able to speak with the youth by phone within one business day, FCO staff report the suspected abuse or neglect by calling SWI. Online reports can be made when hold times warrant.

#### §87.31. Investigation of Complaints.

(a) OO staff review all relevant information through inquiry into agency program systems.

(b) Each complaint is investigated to determine if agency policy was followed by program staff and vendors contracted to provide services on behalf of an agency program. Applicable policies include federal and state law, administrative rules, program handbooks, contracts, and internal program policies and procedures.

(c) When investigating a complaint, OO staff may also consider:

(1) legal authority, by examining the basis of the agency program's decision, and assessing if the decision was made within the scope of that authority;

(2) procedural fairness and rights, by examining if the consumer or individual was given a full understanding of the situation, offered all applicable opportunities to appeal, and given sufficient time to respond when information was requested; and

(3) agreed expectations, by reviewing if the agency program followed through after agreeing to take particular actions, and if the program provided an adequate explanation of decisions.

#### §87.33. Substantiating and Closing Complaints.

(a) Once OO staff have determined all pertinent information has been gathered and their investigation of a complaint is complete, they inform the consumer or individual of the outcome and whether they have determined the complaint to be substantiated, unsubstantiated, or unable to be substantiated.

(b) For substantiated complaints, OO staff document any recommended corrective actions to be taken as a result of the complaint.

(c) A written response will be provided to the consumer or individual if requested.

#### §87.35. Contact Follow-up.

(a) For any contact in which OO staff does not have a real-time interaction with a consumer, individual, or LAR, the OO staff will follow up within one business day of the date of receipt of the contact. OO staff will follow up with the consumer, individual, or LAR at least every 10 business days thereafter, until the contact is closed.

(b) OO staff may establish a more structured communication plan if the conduct of a consumer, individual, or LAR hinders the effective investigation and resolution of a case.

(1) To determine what actions may be appropriate to structure future communication, the case and all communication between OO staff and the consumer, individual, or LAR will be reviewed by an OO supervisor.

(2) If the supervisor determines more structured communication would achieve effective investigation and resolution of the case, a written communication will be shared with the consumer, individual, or LAR outlining what OO finds has hindered complaint resolution.

(3) If the conduct of a consumer, individual, or LAR continues to hinder the investigation or resolution, the HHS Ombudsman will communicate with the consumer, individual, or LAR in writing to outline how future communication with OO staff will be structured. The conduct of the consumer, individual, or LAR will continue to be monitored to determine if communication has improved to the point that the structured communication can be discontinued.

(c) The process outlined in subsection (b) of this section will never result in a consumer, individual, or LAR being left without a way to contact OO staff.

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

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Karen Ray

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For further information, please call: (512) 706-7281



### SUBCHAPTER C. PROVISIONS DIRECTING HHS AND DFPS

#### 26 TAC §87.41, §87.43

##### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new sections implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

##### §87.41. Access to Information.

Texas Government Code §531.995 requires HHSC and DFPS to provide an ombudsman access to records that relate to a complaint the ombudsman is reviewing or investigating.

##### §87.43. Retaliation Prohibited.

(a) Texas Government Code §531.997 prohibits HHSC or DFPS from retaliating against an employee of either agency, as applicable, or any other person who in good faith makes a complaint to an ombudsman or against any person who cooperates with the ombudsman in an investigation.

(b) As referenced in §87.19(c)(2) of this chapter (relating to Duties and Statewide Procedures), the ombudsman will collaborate with HHSC or DFPS to identify consequences for any retaliatory action related to a complaint filed with an ombudsman.

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

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### SUBCHAPTER D. OMBUDSMAN FOR MANAGED CARE ASSISTANCE

#### 26 TAC §87.51

##### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new section implements Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

##### §87.51. Creation of the Program and Populations Served.

(a) OMCAT is established by Texas Government Code §531.9912 in accordance with Texas Government Code §531.9932.

(b) OMCAT is responsible for assisting persons who are experiencing barriers in the Medicaid application and enrollment process and educating them so that they understand the concept of managed care; understand their rights under Medicaid, including grievance and appeal procedures; MCOs, health care providers, and any other appropriate entity on and can advocate for themselves. OMCAT intervenes promptly with HHSC Medicaid program staff, behalf of a person who has an urgent need for medical services.

(c) As a part of the support and information services, OMCAT is responsible for operating a statewide toll-free assistance telephone number.

(d) In accordance with Texas Government Code §531.9932(e), OMCAT is sufficiently independent from other aspects of Medicaid managed care to represent the best interests of consumers in complaint resolution.

(e) OMCAT coordinates a network of entities to provide support and information services to persons enrolled in or applying for Medicaid who experience barriers to receiving health care services.

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

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### SUBCHAPTER E. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE

#### 26 TAC §87.61

##### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new section implements Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.61. Creation of Program and Population Served.

(a) FCO is established by Texas Government Code §531.9912 in accordance with Texas Government Code §531.9931.

(b) FCO serves as an impartial party in assisting children and youth in the conservatorship of DFPS with complaints regarding issues within the authority of DFPS or an HHS agency.

(c) While individuals aged 18 and older may continue to receive DFPS services, they are not considered part of the population served by FCO because they are no longer "in the conservatorship" of DFPS. However, if FCO receives a complaint from a youth who turns 18 during the course of an FCO investigation, the complaint will be completed.

(d) FCO is responsible for receiving and investigating inquiries and complaints from youth in the conservatorship of DFPS, including youth placed by contract as part of the community-based care model established by Texas Family Code, Chapter 264, Subchapter B-1, including single source continuum contractors that provide placement and case management services. For cases involving youth in foster care, or a court-appointed attorney for a youth unable to verbalize their concerns, FCO investigates and maintains communication with either the youth or the attorney. FCO is required to inform complainants of the result of an investigation.

(e) FCO may refer youth to any DFPS or HHS program or service that can assist with the youth's inquiry. With permission from the youth, FCO may work with staff in any DFPS or HHS program to resolve a complaint.

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

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**SUBCHAPTER F. OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE**

**26 TAC §87.71, §87.73**

**STATUTORY AUTHORITY**

The new sections authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive

Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new sections implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.71. Creation of the Program and Populations Served.

(a) OBH is established by Texas Government Code §531.9912 in accordance with Texas Government Code §531.9933.

(b) OBH serves as an impartial party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders. OBH identifies, tracks, and helps report potential parity violations of Texas Insurance Code, Chapter 1355, Subchapter F.

(c) OBH assists consumers who have questions, concerns, or complaints regarding services provided by a state hospital, an LBHA, an LMHA, or through a contract with HHSC as part of the AMH program. Specific rights of these consumers are outlined in 25 Texas Administrative Code Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).

§87.73. Report.

In accordance with Texas Insurance Code §1355.2572(b), OBH collaborates with the Texas Department of Insurance on an annual report on the status of rights and responsibilities for mental health condition and substance use disorder benefits and resolved and unresolved parity complaints.

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

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**SUBCHAPTER G. OMBUDSMAN FOR INDIVIDUALS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY**

**26 TAC §87.81**

**STATUTORY AUTHORITY**

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The new section implements Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.81. Creation of the Program and Populations Served.

(a) The IDDO program is established by Texas Government Code §531.9912 in accordance with Texas Government Code §531.9934.

(b) IDDO serves as an impartial party to assist individuals with IDD, their LARs, their program providers, and LIDDAs as they navigate and resolve complaints or grievances regarding infringement of the rights of a person with an intellectual disability or delivery of intellectual disability services. This in accordance with Texas Health and Safety Code §592.039.

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

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**SUBCHAPTER A. OFFICE OF THE OMBUDSMAN**

**26 TAC §§87.101, 87.103, 87.105, 87.107, 87.109, 87.111, 87.113, 87.115, 87.117, 87.119**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The repeals implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

*§87.101. Definitions.*

*§87.103. Creation of the Office and Populations Served.*

*§87.105. Contact Information.*

*§87.107. Confidentiality.*

*§87.109. Data and Reports.*

*§87.111. Referrals to Other HHS Offices or Other Entities.*

*§87.113. Intake of Contacts.*

*§87.115. Research and Communication with HHS Programs.*

*§87.117. Follow-up with Consumers.*

*§87.119. Substantiating and Closing Complaints.*

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**SUBCHAPTER B. OMBUDSMAN MANAGED CARE ASSISTANCE**

**26 TAC §§87.201, 87.203, 87.205, 87.207, 87.209, 87.211, 87.213, 87.215, 87.217, 87.219**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The repeals implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

*§87.201. Definitions.*

*§87.203. Creation of the Program and Populations Served.*

*§87.205. Contact Information.*

*§87.207. Confidentiality.*

*§87.209. Reports.*

*§87.211. Referrals to Other HHS Offices or Other Entities.*

*§87.213. Intake of Contacts.*

*§87.215. Research and Communication with HHS Programs, Health Care Providers, and Medicaid Managed Care Organizations.*

*§87.217. Follow-up with Consumers.*

*§87.219. Substantiating and Closing Complaints.*

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**SUBCHAPTER C. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE**

**26 TAC §§87.301, 87.303, 87.305, 87.307, 87.309, 87.311, 87.313, 87.315, 87.317, 87.319, 87.321**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The repeals implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.301. *Definitions.*

§87.303. *Creation of Program and Population Served.*

§87.305. *Contact Information.*

§87.307. *Confidentiality.*

§87.309. *Data and Reports.*

§87.311. *Referrals to Other HHS Offices or Other Entities.*

§87.313. *Intake of Contacts.*

§87.315. *Research Using DFPS and HHS Systems and Policies.*

§87.317. *Follow-up Communication with Youth.*

§87.319. *Substantiating and Closing Complaints.*

§87.321. *Retaliation.*

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

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## SUBCHAPTER D. OMBUDSMAN FOR BEHAVIORAL HEALTH

**26 TAC §§87.401, 87.403, 87.405, 87.407, 87.409, 87.411, 87.413, 87.415, 87.417, 87.419**

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The repeals implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.401. *Definitions.*

§87.403. *Creation of the Program and Populations Served.*

§87.405. *Contact Information.*

§87.407. *Confidentiality.*

§87.409. *Data and Reports.*

§87.411. *Referrals to Other HHS Offices or Other Entities.*

§87.413. *Intake of Contacts.*

§87.415. *Research and Communication with HHS Programs and Agencies that Regulate Health Plans.*

§87.417. *Follow-up with Consumers.*

§87.419. *Substantiating and Closing Complaints.*

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## SUBCHAPTER E. INTELLECTUAL OR DEVELOPMENTAL DISABILITY OMBUDSMAN

**26 TAC §§87.501, 87.503, 87.505, 87.507, 87.509, 87.511, 87.513, 87.515, 87.517, 87.519**

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Government Code Chapter 531, Subchapter Y.

The repeals implement Texas Government Code §531.0055; Texas Government Code §531.033; and Texas Government Code, Chapter 531, Subchapter Y.

§87.501. *Definitions.*

§87.503. *Creation of the Program and Populations Served.*

§87.505. *Contact Information.*

§87.507. *Confidentiality.*

§87.509. *Data and Reports.*

§87.511. *Referrals to Other HHS Offices or Other Entities.*

§87.513. *Intake of Contacts.*

§87.515. *Research and Communication with HHS Programs.*

§87.517. *Follow-up with Individuals with IDD.*

§87.519. *Substantiating and Closing Complaints.*

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## CHAPTER 356. FAMILY VIOLENCE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§356.1, 356.101, 356.102, 356.103, 356.104, 356.201, 356.202, 356.203, 356.204, 356.205, 356.206; 356.301, 356.302, 356.401, 356.402, 356.403, 356.405, 356.501, 356.503, 356.504, 356.505, 356.506, 356.507, 356.510, 356.601, 356.602, 356.604, 356.606, 356.607, 356.609, 356.610, 356.611, 356.612, 356.613, 356.614, 356.615, 356.616, 356.617, 356.618, 356.619, 356.620, 356.621, 356.623, 356.626, 356.627, 356.629, 356.631, 356.635, 356.701, 356.702, 356.703, 356.704, 356.706, 356.707, 356.708, 356.709, 356.711, 356.713, 356.714, 356.718, 356.803, 356.901, 356.902, 356.1001, 356.1002, 356.1101, 356.1102, 356.1103, 356.1105, 356.1201, 356.1202, 356.1301, 356.1302, 356.1304, 356.1306, 356.1308, 356.1309, 356.1310, 356.1311, 356.1312, 356.1313, 356.1315, 356.1316, 356.1317, 356.1318, 356.1319, 356.1321, 356.1402, 356.1403, 356.1405, 356.1501, 356.1502, 356.1503, 356.1504, 356.1602, 356.1604, 356.1605, 356.1701, 356.1702, 356.1801, 356.1802, 356.1803, 356.1805, 356.1901, 356.1902, 356.1903, 356.2001, 356.2002, 356.2004, 356.2006, 356.2007, 356.2009, 356.2010, 356.2011, 356.2012, 356.2013, 356.2014, 356.2015, 356.2016, 356.2017, 356.2018, 356.2019, 356.2021, 356.2024, 356.2026, 356.2029, 356.2033, 356.2101, 356.2102, 356.2103, 356.2105, 356.2106, 356.2108, 356.2110; new 356.208, 356.303, 356.603, 356.636, 356.637, 356.705, 356.710, 356.716, 356.719, 356.720, 356.1003, 356.1303, 356.1324, 356.1325, 356.1401, 356.1404, 356.1408, 356.1409, 356.1703, 356.2003, 356.2034, 356.2035, 356.2104, 356.2107, 356.2112, 356.2114, 356.2115, 356.2201, and the repeal of §§356.207, 356.406, 356.407, 356.408, 356.508, 356.603, 356.622, 356.624, 356.625, 356.630, 356.632, 356.633, 356.705, 356.710, 356.712, 356.716, 356.717, 356.719, 356.1303, 356.1314, 356.1320, 356.1322, 356.1401, 356.1404, 356.1406, 356.1408, 356.1806, 356.1807, 356.2003, 356.2020, 356.2022, 356.2028, 356.2030, 356.2031, 356.2104, 356.2107, 356.2109, 356.2112, 356.2113, and 356.2114.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to ensure that the rules in Title 26 of the Texas Administrative Code (TAC) Chapter 356 comply with changes to state and federal laws and regulations. Another purpose is to clarify and improve the rules to be more survivor-centered, trauma-informed, and accessible. The proposal will enable Family Violence Program (FVP) providers to better serve survivors of family violence and their children across the state and improve confidential and privileged communications in response to statutory changes.

Specifically, the proposal implements changes made to the Code of Federal Regulations, Title 45 (45 CFR), Part 1370, on November 2, 2016; as well as changes to Texas Human Resources Code, Chapter 51, made by Senate Bill 1841, 88th Legislature, Regular Session, 2023; Texas Human Resources Code, Chapter 51A, created by Senate Bill 1325, 88th Legislature, Regular Session, 2023; and Texas Family Code, Chapter 93, created by House Bill 3649, 85th Legislature, Regular Session, 2017.

45 CFR Part 1370 ensures that rules pertaining to the administration of the Family Violence Prevention and Services

Act (FVPSA) meet statutory requirements and best practices. These updates in the proposed rules include training provisions, trauma-informed and survivor-centered service regulations, and increases access to services for survivors from underserved populations.

Texas Human Resources Code Chapter 51 promotes development of and access to locally based and supported nonprofit services for victims of family violence throughout the state. These updates in the proposed rules add definitions, change the minimum required services for contracting with the FVP, and require FVP centers to demonstrate the use of a voluntary and trauma-informed advocacy service model. These updates also add the new requirement in Chapter 51A requiring HHSC to adopt a written notice to be provided to victims of family violence, stalking, harassment, or terroristic threat to assist victims in obtaining services.

Texas Family Code Chapter 93 establishes a victim-advocate privilege that victims and certain other parties may invoke to refuse to disclose and to prevent another from disclosing a confidential communication between the victim and family violence center trained advocates.

Additionally, the proposal updates child care rule references as a result of the administrative transfer of chapters from 40 TAC Chapters 743, 745, and 746 to 26 TAC Chapters 743, 745, and 746 in May 2018, July 2019, and March 2018, respectively.

### SECTION-BY-SECTION SUMMARY

The proposed amendments to the sections listed below are non-substantial and contain updates to citations, agency name, position titles, and terminology; correct minor grammatical and punctuation errors; and revise sentence structure.

Subchapter B, Shelter Centers

§356.201 Special Nonresidential Project Contract

§356.204 Internal Monitoring System

§356.205 Funding Waivers

§356.302 Cash/Non-Cash Documentation, retitled as Cash or Non-Cash Resources Documentation

§356.507 Types of Facilities Allowed by the Commission for a 24-hour-a-Day Shelter, retitled as Types of Facilities Allowed by the Texas Health and Human Services Commission for a 24-hour-a-Day Shelter

§356.602 Charging for Services

§356.610 Emergency Shelter or Care for an Unaccompanied Minor

§356.618 Policies and Procedures Regarding Entries in a Resident or Nonresident File, retitled as Policies and Procedures Regarding Entries in a Resident or Nonresident Record

§356.621 Release of Resident or Nonresident Information Document, retitled as Release of Information Form

§356.629 Resident's Belongings

§379.707 Residents' Medications

Subchapter C, Special Nonresidential Projects

§356.901 Internal Monitoring System

§356.1002 Cash/Non-cash Resources Documentation, retitled as Cash or Non-Cash Resources Documentation

§356.1301 Required Services

§356.1302 Charging for Services

§356.1316 Policies and Procedures Regarding Entries in a Resident or Nonresident File, retitled as Policies and Procedures Regarding Entries in a Resident or Nonresident Record

§356.1319 Release of Program Participant Information Document, retitled as Release of Information Form

Subchapter D, Nonresidential Centers

§356.1602 Special Nonresidential Project Contract

§356.1604 Funding Waivers

§356.1702 Cash/Non-Cash Resources Documentation, retitled as Cash or Non-Cash Resources Documentation

§356.2002 Charging for Services

§356.2016 Policies and Procedures Regarding Entries in Program Participant's Files, retitled as Policies and Procedures Regarding Entries in a Program Participant's Record

§356.2019 Release of Program Participant Information Document, retitled as Release of Information Form

The proposed amendments, new sections, and repealed sections described below contain substantial revisions.

Subchapter A, Definitions

The proposed amendment to §356.1, concerning Definitions, adds definitions for the terms "24-hour-a-day shelter", "abuse of funds", "advocacy", "additional HHSC-funded shelter", "client", "complaint", "data breach", "executive director", "fraud", "human trafficking", "minor", "personally identifying information", "primary prevention", "secondary prevention", "waste", and "written". These definitions are needed to define what these terms mean when used in the chapter.

The proposed amendment to §356.1 deletes the definitions for "civil justice system", "cooperation with criminal justice officials", "criminal justice system", "education arrangements for children", "emergency medical care", "emergency transportation", "intervention services", "legal assistance", "referral system to existing community services", "satellite shelter", "training and employment information", "twenty-four-hour-a-day shelter", and "volunteer recruitment and training program". Definitions were deleted if no longer required or defined in other statute or data reporting guidance.

The proposed amendment to §356.1 revises the definitions of "community education", "crisis call hotline", "dating violence", "family violence", "nonresident", "nonresidential center", "program participant", "resident", "shelter center", "special nonresidential project center", "standards", and "victim of family violence". These definitions are updated to match either changes to statute or to the chapter.

Subchapter B, Shelter Centers

The proposed amendment to §356.101, Fiscal Oversight and Accountability, revises the title of the rule to "Oversight and Accountability" and clarifies the role of the board of directors. The proposed amendment also adds the expectations of the board regarding knowledge of the Texas Health and Human Services Commission Family Violence Program grant and the requirement to comply with center complaint policies.

The proposed amendment to §356.102, Shelter Center's Board Handbook, revises the timeframe for board members to receive the board handbook. The proposed amendment also requires the handbook to contain information on the organization's efforts to support underserved populations and information on the intersection of family violence and barriers to services for underserved populations.

The proposed amendment to §356.103, concerning Board of Directors Training, revises the required training to state that it must be provided to board members every year, instead of every two years, and that the board members must receive the training within 60 days of their first term, instead of three months. The proposed amendment also removes the requirement for training on the center's insurance coverage. The proposed amendment adds the requirement of training on barriers to services for underserved populations and references the requirements in §356.616, concerning Confidentiality and Victim-Advocate Privilege Training.

The proposed amendment to §356.104, Confidentiality, revises the title of the rule to "Confidentiality and Victim-Advocate Privilege" and strengthens board member requirements for knowledge of confidentiality policies. The proposed amendment also requires board members to provide written assurance of their knowledge of the victim-advocate privilege under Texas Family Code Chapter 93, which includes their knowledge that they must not use their position to obtain privileged information.

The proposed amendment to §356.202, Satellite Shelter Funding, revises the title of the rule to "Additional HHSC-Funded Shelter Funding" and replaces the term "satellite" with "additional" throughout the rule to better align with current practices of family violence center operations.

The proposed amendment to §356.203, Satellite Shelter Requirements, revises the title of the rule to "Additional HHSC-Funded Shelter Requirements" and replaces the term "satellite" with "additional" to better align with current practices of family violence center operations. The proposed amendment also provides that additional shelters may serve an underserved geographic location. The center must have an employee or volunteer either on-site continuously when a resident is staying in the shelter, or on-site or on-call 24-hours-a-day, every day of the year, when no residents are staying in the shelter.

The proposed amendment to §356.206, Requesting a Variance or Waiver, revises the title of the rule to "Requesting a Funding Waiver", clarifies the information that must be submitted to request a waiver, and removes a timeline for submitting the request.

The proposed repeal of §356.207, More than One Funding Percentage Waiver, prohibiting a center from receiving more than two funding waivers in consecutive contract terms is deemed unnecessary because §356.205 contains a current rule that if a center receives three or more funding waivers in a five-year period, the center may be subject to corrective action.

Proposed new §356.208, Primary Services to an Unserved or Underserved Population, outlines the requirement for shelter centers that primarily serve an unserved or underserved population to have a plan for providing services to otherwise eligible victims who are not members of the targeted population. The proposed rule allows the plan to include referrals. This rule currently applies to Special Nonresidential Project Contracts and is being added to apply to Shelter Contracts.

The proposed amendment to §356.301, Accounting System Requirements, seeks to better align accounting practices with Texas Health and Human Services policy and best practices.

Proposed new §356.303, Fraud, Waste, and Abuse, outlines the requirement and process for reporting any suspected or confirmed fraud, waste, or abuse of funds paid from the contract.

The proposed amendment to §356.401, Personnel Policies, revises the requirements of the center's personnel handbook and the timeframe for employee notification of any changes to policy. The proposed amendment also requires the handbook to contain information on the center's nondiscrimination policies, complaint process, and response to staff experiencing family violence and violence occurring in the workplace.

The proposed amendment to §356.402, Personnel Files, requires personnel confidentiality and victim-advocate agreements to be updated annually.

The proposed amendment to §356.403, Drug and Alcohol Policy, clarifies language around the use and possession of drugs and alcohol.

The proposed amendment to §356.405, Staff Development, revises the title of the rule to "Ongoing Employee Training" and requires employees to receive information annually on a wide array of topics to better align with best practices in service delivery. Additionally, the amendment requires employees with access to personally identifying information to receive annual training in compliance with §356.616, Confidentiality and Victim-Advocate Privilege Training.

The proposed repeal of §356.406, Children's Advocate, deletes the rule as no longer necessary to allow for flexibility of staffing and promote that all staff are able to meet the needs of children.

The proposed repeal of §356.407, Legal Advocate, deletes the rule as no longer necessary to allow for flexibility of staffing and promote that all staff are able to meet the legal needs of clients served.

The proposed repeal of §356.408, concerning Volunteer Coordinator, deletes the rule as no longer necessary, because Chapter 51 of Texas Human Resources Code no longer requires centers to have a volunteer program.

The proposed amendment to §356.501, Facility Requirements for the 24-Hour-a-Day Shelter Center, specifies that the safe indoor and outdoor play areas a center is currently required to have for younger clients need to be developmentally appropriate. The amendment also requires centers to clearly mark safety measures, plans, and inspections. Additionally, the amendment specifies that the first-aid kits a center is currently required to have in all center facilities must be fully stocked and in central locations and communal spaces, as specified by center policy, that are accessible to all employees, volunteers, and residents.

The proposed amendment to §356.503, Security System, clarifies the language around the types of security systems that must be in place at HHSC-funded centers.

The proposed amendment to §356.504, Security Policies and Procedures, adds that all HHSC-funded shelter centers must have policies to address threats of violence and public health emergencies. The amendment also stipulates that centers must notify HHSC immediately of any safety or security breaches that disrupt services anticipated to last 24 hours or longer. Additionally, the amendment states that centers may choose to make the location of emergency shelters public and that centers that

choose to keep their location confidential must have systems and protocols in place to ensure that they remain secure.

The proposed amendment to §356.505, Shelter Center and Satellite Shelter Staffing, revises the title of the rule to "Shelter Center Staffing" because it is unnecessary to differentiate between shelter centers. The proposed amendment requires the center to have an employee or volunteer either on-site continuously when a resident is staying in the shelter, or on-site or on-call 24-hours-a-day, every day of the year, when no residents are staying in the shelter.

The proposed amendment to §356.506, Providing Hygiene Items to Residents, adds survivor-centered policies for providing direct access to general hygiene and essential personal items without having to request the items from staff.

The proposed repeal of §356.508, Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day Shelter, deletes a rule that is no longer necessary as exceptions to §356.507 are not allowable.

The proposed amendment to §356.510, Using a Motel as a Type of Shelter, revises the title of the rule to "Using a Hotel or Motel as a Type of Shelter" and adds the term "hotel" to be more inclusive of facility types. The amendment also outlines staff or volunteer coverage requirements at the hotel or motel. Additionally, the amendment requires centers to offer services otherwise available at the shelter and requires them to provide an in-person visit when a client makes the request.

The proposed amendment to §356.601, Required Services, strengthens the requirement for shelters to ensure access to services is aligned with the Family Violence Prevention and Services Act.

The proposed repeal of §356.603, Eligibility, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.603.

Proposed new §356.603, Eligibility, defines eligibility to include victims of dating violence, as well as victims of sexual assault and human trafficking if those offenses meet the definition of family violence or dating violence. Additionally, the section requires eligibility to include serving all eligible victims regardless of their current geographic location.

The proposed amendment to §356.604, Federal and State Laws Regarding Eligibility, reorders the list of statutes to align with the order of deference given by the courts.

The proposed amendment to §356.606, Denial of Services, requires centers to provide appropriate referrals to other service providers when denying services.

The proposed amendment to §356.607, Eligibility of Previously Involuntarily Terminated Residents or Nonresidents, requires a shelter center to assess each request for service from a person who was previously involuntarily terminated. The amendment also prohibits a center from denying services to a victim who was previously involuntarily terminated based solely on the victim's previous involuntary termination.

The proposed amendment to §356.609, Services at Capacity, revises the title of the rule to "Shelter at Capacity" and adds services that must be provided to a victim if the center's primary method of providing shelter to the victim is full.

The proposed amendment to §356.611, Nonresidential Services for a Person Under 18 Years of Age, revises the title of the rule to

"Nonresidential Services for a Minor" and clarifies when centers may provide nonresidential services to a minor without obtaining consent from the minor's parent, managing conservator, or guardian.

The proposed amendment to §356.612, Termination of Services, adds language to require centers to implement grounds for termination that are concerned solely with the safety and security of center staff, residents, and nonresidents. The proposed amendment also allows centers to allow considerations for residents and nonresidents to have contact with an abuser without grounds for termination. Additionally, the amendment allows residents and nonresidents to voluntarily terminate their services at any time.

The proposed amendment to §356.613, General Confidentiality Policy, revises the title of the rule to "General Confidentiality and Victim-Advocate Privilege Policy" and includes privileged communication requirements between victims and trained family violence center advocates added under Texas Family Code Chapter 93.

The proposed amendment to §356.614, Confidentiality Information for Adult Residents and Nonresidents, revises the name of the rule to "Confidentiality and Victim-Advocate Privileged Information for Adult Residents and Nonresidents" and includes privileged communication requirements between victims and trained family violence center advocates added under Texas Family Code Chapter 93. The amendment also restricts centers from charging residents and nonresidents a fee when accessing the resident's and nonresident's records, and adds a requirement when the center cannot provide the information in subsection (a) of the rule in writing.

The proposed amendment to §356.615, Confidentiality Agreements, revises the title of the rule to "Confidentiality and Victim-Advocate Agreements" and revises the list of people required to sign a confidentiality and victim-advocate privilege agreement. The amendment also adds the requirement for centers to have a confidentiality policy for center visitors. Additionally, the amendment adds requirements for the center when a confidentiality agreement cannot be physically signed.

The proposed amendment to §356.616, Confidentiality Training, revises the title of the rule to "Confidentiality and Victim-Advocate Privilege Training" and includes requirements for training to employees, board members, contract staff, volunteers, and interns who have access to personally identifying information on victim-advocate privilege and procedures for responding to court orders due to the implementation of Texas Family Code Chapter 93, which implemented victim-advocate privilege for family violence centers.

The proposed amendment to §356.617, Information in Resident or Nonresident Files, revises the title of the rule to "Information in Resident or Nonresident Records" and replaces "files" with "record" in the rules to use consistent terminology when referring to these types of records. The proposed amendment adds the consideration for records to be maintained either in hard-copy or electronic format. It also adds that needs documented should be a survivor-stated need, and removes current paragraph (2) because setting goals is not a requirement to receive services.

The proposed amendment to §356.619, Maintaining Control over Resident and Nonresident Files, revises the title of the rule to "Maintaining Control Over Resident and Nonresident Records" because "records" is the term used in the rule. The

proposed amendment clarifies that residents and nonresidents cannot be charged a fee when accessing their records.

The proposed amendment to §356.620, Release of Resident or Nonresident Information, strengthens the requirements for a center to be able to release resident or nonresident information to better align with the requirements of the Family Violence Prevention and Services Act. The amendment also restricts an abuser or suspected abuser of a minor from being allowed to consent to the release of a minor's information.

The proposed repeal of §356.622, Court Orders, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.623.

The proposed amendment to §356.623, Procedures Regarding Court Orders, requires the center's written procedures to include a process for notifying victims of a potential release of information and a statement that the center will take steps necessary to protect the privacy and safety of the person. The proposed amendment also adds the requirement for centers to comply with privilege provisions.

The proposed repeal of §356.624, Notification of Court Orders, deletes the rule as no longer necessary, because the content of the rule has been added to proposed amended §356.623.

The proposed repeal of §356.625, Policies and Procedures for the Retention and Destruction of Documentation, ensures that retention and destruction of documentation procedures do not conflict with the requirements of the HHSC contract related to family violence service delivery.

The proposed amendment to §356.626, Disruption in Providing Services, clarifies the circumstances for reporting a disruption in services. The proposed amendment also details how the report to HHSC must be made.

The proposed amendment to §356.627, Maximum Length of Stay for Shelter Center Residents, revises the title of the rule to "Length of Stay for Shelter Center Residents" and requires a center to offer a minimum stay of no less than 30 days from the date of entry into the shelter, for a resident to use, if the resident chooses to do so. The amendment also provides that a resident's stay may be terminated sooner than 30 days if aligned with the center's policies required under proposed amended §356.612 pertaining to Termination of Services.

The proposed repeal of §356.630, Cooperation with Criminal Justice Officials, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 created a new category of services to include advocacy focused on civil and criminal legal systems, which has been added in the proposed amendment to §356.701, Shelter Center Services.

The proposed amendment to §356.631, Community Education, revises the title of the rule to "Community Education and Prevention" and adds prevention education as a component of community education to align with changes to Texas Human Resources Code Chapter 51. The amendment also adds underserved communities as a targeted audience and requires centers to comply with proposed new §356.636, Access to Services for People with a Disability, in their community education efforts.

The proposed repeal of §356.632, Volunteer Program, deletes the rule as no longer necessary, because Texas Human Resources Code Chapter 51 no longer requires centers to have a volunteer program.

The proposed repeal of §356.633, Volunteer Recruitment, deletes the rule as no longer necessary, because Texas Human Resources Code Chapter 51 no longer requires centers to have a volunteer program.

The proposed amendment to §356.635, Content of Training for Non-Direct Service Volunteers, requires training on a center's policies and procedures regarding victim-advocate privilege, implementing Texas Family Code Chapter 93.

Proposed new §356.636, Access to Services for People with a Disability, adds requirements for how centers must provide access for people with a disability in accordance with the Family Violence Prevention and Services Act.

Proposed new §356.637, Service Model, requires centers to develop, maintain, and comply with a voluntary and trauma-informed service model that respects an individual's needs in accordance with changes to Texas Human Resources Code Chapter 51. Additionally, it requires centers to provide training related to the service model and have a written process to evaluate the service model.

The proposed amendment to §356.701, Shelter Center Services, revises the list of required services to align with legislative updates to Texas Human Resources Code Chapter 51, as well as crisis call hotline requirements to be more accessible to people with limited English proficiency and to people with a disability in accordance with the Family Violence Prevention and Services Act.

The proposed amendment to §356.702, Data Collection, revises the name to "Reporting Data to HHSC" and clarifies how a center must report data to HHSC. The amendment also explains that a center must report to HHSC within two business days if it will have trouble submitting accurate data. The amendment also requires a center to notify HHSC via email within 24 hours of discovery if there is a data breach and provide written notification to HHSC by the third business day after discovery of a data breach. Additionally, the amendment adds a clause regarding a resident's or nonresident's option to refuse to provide personal data.

The proposed amendment to §356.703, Promoting Cooperative Living in the Shelter, adds survivor-centered considerations for the cooperative living agreement.

The proposed amendment to §356.704, Crisis Call Hotline, revises the policies to be more aligned with current business practices and accessibility requirements of the Family Violence Prevention and Services Act.

The proposed repeal of §356.705, Subcontracting the Crisis Call Hotline, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.705.

Proposed new §356.705, Transferring the Crisis Call Hotline, provides the conditions under which a center may transfer its crisis call hotline.

The proposed amendment to §356.706, Medical Care, revises a center's resource list requirements to include survivor-centered resources, as well as affordable options and physical, mental, and behavioral health resources. The proposed amendment also requires a center to provide standard first aid medical supplies that are accessible to residents 24-hours-a-day.

The proposed amendments to §356.708 and §356.709, Resident's Orientation and Nonresident's Orientation, respectively,

require centers to provide orientation to a resident or nonresident, in accordance with the Family Violence Prevention and Services Act and within 72 hours of their entry into services. The proposed amendment also requires that the center keep adequate documentation. Additionally, the amendment clarifies the information that must be shared with regards to complaint procedures and adds information on victim-advocate privilege contained within Texas Family Code Chapter 93.

The proposed repeal of §356.710, Service Plan, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.710.

Proposed new §356.710, Needs Assessment, requires the documentation of each resident's and nonresident's self-stated needs and request for services. The proposed amendment emphasizes the voluntary services requirements in 45 CFR §1370.10(b)(10) and in Texas Human Resources Code §51.005(b-1)(1), effective on September 1, 2024. The proposed amendment also requires centers to offer assistance in developing needs assessment plans at each re-entry into the program.

The proposed amendment to §356.711, Group Intervention, revised the title of the rule to "Support Groups" and clarifies that centers must provide one weekly voluntary support group for adult residents and adult nonresidents.

The proposed repeal of §356.712, Religion and Intervention Services, deletes the rule as no longer necessary, because the content of the rule will be added to contracts with the centers.

The proposed amendment to §356.713, Delivery of Children's Direct Services, requires a center to have developmentally appropriate services and a voluntary, developmentally appropriate support group for child residents.

The proposed amendment to §356.714, Intervention Services for Children Residing in the Shelter, revised the title of the rule to "Services for Children Residing in the Shelter" and requires a center to offer developmentally appropriate services for child residents. The proposed amendment requires a center to offer strategies to enhance safety within the shelter environment and safety at school. Additionally, the proposed amendment stipulates that intervention services for child residents must include resources that are inclusive of the client's unique needs, when available, and provide information regarding victim-advocate privilege and characteristics of healthy interpersonal relationships.

The proposed repeal of §356.716, Texas Department of Family and Protective Services' (DFPS) Child-Care Permit, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.716.

Proposed new §356.716, Child Care Permit, contains references to the child care permit regulations under Texas Human Resources Code Chapter 42 and 26 TAC Chapters 743, 745, and 746.

The proposed repeal of §356.717, Legal Assistance Services, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 created a new category of services to include advocacy focused on civil and criminal legal systems, which has been added in the proposed amendment to §356.701, Shelter Center Services.

The proposed amendment to §356.718, Educational Services for Children of Adult Residents, requires centers to maintain knowledge of educational services available within their com-

munities. The proposed amendment also requires centers to arrange transportation for the child's continued education.

The proposed repeal of §356.719, Training and Employment Services, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 no longer requires centers to provide information about training for and seeking employment.

Proposed new §356.719, Client Assistance Funds, requires that when funds are available, centers must develop, maintain, and comply with policies and procedures regarding victims' access to assistance funds that are consistent and equitable.

Proposed new §356.720, Counseling Services, outlines how family centers may provide counseling services either by employees, contract staff, interns, or volunteers, or by referral to community resources available. It also clarifies that centers do not have to pay for outside counseling but must maintain a current list of counseling resources in the community. Further, it states that counseling can include varying modalities to meet the mental health and wellness needs of survivors.

#### Subchapter C, Special Nonresidential Projects

The proposed amendment to §356.803, Confidentiality, strengthens board member requirements for knowledge of confidentiality policies and requires a board member to provide written assurance that the member will not use their position to obtain access to confidential information when not authorized.

The proposed amendment to §356.902, Requesting a Variance or Waiver, revises the title of the rule to "Requesting a Funding Waiver" and clarifies the information that must be submitted to request a waiver, and removes a timeline for submitting the request.

The proposed amendment to §356.1001, Accounting System Requirements, seeks to better align accounting practices with Texas Health and Human Services policy and best practices.

Proposed new §356.1003, Fraud, Waste, and Abuse, outlines the requirement and process for reporting any suspected or confirmed fraud, waste, or abuse of funds paid from the contract, emphasizing that centers must protect victims' personally identifying information when reporting fraud, waste, or abuse.

The proposed amendment to §356.1101, Personnel Policies, revises the requirements for the center's personnel handbook and the timeframe for employee notification of any changes to policy. The proposed amendment also requires the handbook to contain information on the center's nondiscrimination policies, complaint process, and response to staff experiencing family violence and violence occurring in the workplace.

The proposed amendment to §356.1102, Personnel Files, requires personnel confidentiality and victim-advocate agreements to be updated annually.

The proposed amendment to §356.1103, Drug and Alcohol Policy, clarifies language around the use and possession of drugs and alcohol.

The proposed amendment to §356.1105, Staff Development, revises the title of the rule to "Ongoing Employee Training" and requires employees to receive information annually on a wide array of topics to better align with best practices in service delivery.

The proposed amendment to §356.1201, Facility Requirements for the Special Nonresidential Project, adds the requirement for

centers to provide clearly marked safety measures, plans, and inspections as well as secure locations for cleaners and hazardous materials. Additionally, the amendment requires centers to keep stocked first-aid kits in central and communal areas of the shelter that are accessible to all employees, volunteers, and residents. Further, the amendment requires access to bathroom facilities.

The proposed amendment to §356.1202, Security System, clarifies the language around the types of security systems that must be in place.

The proposed repeal to §356.1303, Eligibility, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.1303.

Proposed new §356.1303, Eligibility, defines eligibility to include victims of dating violence, as well as victims of sexual assault and human trafficking if those offenses meet the definition of family violence or dating violence. Additionally, the section requires eligibility to include serving all eligible victims regardless of their current geographic location.

The proposed amendment to §356.1304, Federal and State Laws Regarding Eligibility, reorders the list of statutes to align with the order of deference given by the courts.

The proposed amendment to §356.1306, Denial of Services, requires centers to provide appropriate referrals to other service providers when denying services.

The proposed amendment to §356.1308, Nonresidential Services for a Person Under 18 Years of Age, revises the title of the rule to "Nonresidential Services for a Minor" and clarifies when centers may provide nonresidential services to a minor without obtaining consent from the minor's parent, managing conservator, or guardian.

The proposed amendment to §356.1309, Termination of Services, adds language to require centers to implement grounds for termination that are concerned solely with the safety and security of center staff and other clients. The proposed amendment also allows centers to allow considerations for program participants to have contact with an abuser without grounds for termination. Additionally, the amendment allows program participants to voluntarily terminate their services at any time.

The proposed amendment to §356.1310, General Confidentiality, adds requirements to create procedures regarding important confidentiality parameters to be consistent with shelter and non-residential center requirements.

The proposed amendment to §356.1311, Confidentiality Information for Program Participants, restricts centers from charging residents and nonresidents a fee when accessing their client records, and adds a requirement when the center cannot provide the information in subsection (a) of the rule in writing.

The proposed amendment to §356.1312, Confidentiality Agreements, revises the list of people required to sign a confidentiality agreement. The amendment also adds the requirement for centers to have a confidentiality policy for center visitors. Additionally, the amendment adds requirements for the center when a confidentiality agreement cannot be physically signed.

The proposed amendment to §356.1313, Confidentiality Training, updates who must receive confidentiality training, and includes a requirement of training on procedures for responding to court orders and any other requests for confidential information.

The proposed repeal of §356.1314, Provision of Health and Human Services Commission (HHSC)-funded Services by Attorneys or Other Licensed Professionals, deletes the rule as no longer necessary.

The proposed amendment to §356.1315, Information in Program Participant Files, revises the name of the rule to "Information in Program Participant Records", replaces "files" with "record", and allows for information to be kept both written and electronically in a program participant's record. It also adds that needs documented should be a survivor-stated need, and removes current paragraph (2) because setting goals is not a requirement to receive services.

The proposed amendment to §356.1317, Maintaining Control over Program Participant Files, revises the name of the rule to "Maintaining Control Over Program Participant Records" because "records" is the term used in the rules. The proposed amendment clarifies that residents and nonresidents cannot be charged a fee when accessing their records.

The proposed amendment to §356.1318, Release of Program Participant Information, strengthens the requirements for a center to be able to release a client's information to better align with the requirements of the Family Violence Prevention and Services Act. The amendment clarifies that this rule does not apply when responding to subpoenas and other documents with which a center is legally required to comply; however, the amendment also allows for centers to raise claims of confidentiality or privilege prior to responding. The amendment also restricts an abuser or suspected abuser of a minor from being allowed to consent to the release of a minor's information.

The proposed repeal of §356.1320, Court Orders, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.1321.

The proposed amendment to §356.1321, Procedures Regarding Court Orders, requires the center's written procedures to include a process for notifying victims of a potential release of information and a statement that the center will take steps necessary to protect the privacy and safety of the person.

The proposed repeal of §356.1322, Notification of Court Orders, deletes the rule as no longer necessary because the content of the rule has been added to proposed amended §356.1321.

Proposed new §356.1324, Access to Services for People with a Disability, adds requirements for how centers must provide access for people with a disability in accordance with the Family Violence Prevention and Services Act.

Proposed new §356.1325, Service Model, requires centers to develop, maintain, and comply with a voluntary and trauma-informed service model that respects an individual's needs in accordance with changes to Texas Human Resources Code Chapter 51. Additionally, it requires centers to provide training related to the service model and have a written process to evaluate the service model.

The repeal of §356.1401, Special Nonresidential Project Services, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.1401.

Proposed new §356.1401, Special Nonresidential Project Services, provides requirements for centers with a special nonresidential project. This includes providing either community education and prevention or direct services that address an underserved or special population. A center must also maintain a re-

ferral system for victims needing other resources, including shelter, and requires obtaining feedback from those receiving services.

The proposed amendment to §356.1402, Data Collection, revises the title of the rule to "Reporting Data to HHSC" and clarifies how a center must report data to HHSC. The proposed amendment requires a center to report to HHSC within two business days if it will have trouble submitting accurate data. The proposed amendment requires a center to notify HHSC via email within 24 hours of discovery if there is a data breach and provide written notification to HHSC by the third business day after discovery of a data breach. Additionally, the proposed amendment adds a clause regarding a client's option to refuse to provide personal data.

The proposed amendment to §356.1403, Crisis Call Hotline, revises the policies to be more aligned with current business practices and accessibility requirements of the Family Violence Prevention and Services Act.

The proposed repeal of §356.1404, Subcontracting the Crisis Call Hotline, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.1404.

Proposed new §356.1404, Transferring the Crisis Call Hotline, stipulates the conditions under which a center may transfer its crisis call hotline.

The proposed amendment to §356.1405, Program Participant's Orientation, requires that if a center provides direct services, the center must provide orientation to a client in accordance with the Family Violence Prevention and Services Act. The proposed amendments require that the center keep adequate documentation. Additionally, the amendments clarify the information that must be shared with regard to complaint procedures.

The proposed repeal of §356.1406, Religion and Intervention Services, deletes the rule as no longer necessary, because the content of the rule will be added to contracts with the centers.

The proposed repeal of §356.1408, Texas Department of Family and Protective Services' (DFPS) Child-Care Permit, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.1408.

Proposed new §356.1408, Child Care Permit, contains references to the child care permit regulations under Texas Human Resources Code Chapter 42 and 26 TAC Chapters 743, 745, and 746.

Proposed new §356.1409, Client Assistance Funds, requires that when funds are available, centers must develop, maintain, and comply with policies and procedures regarding victims' access to assistance funds that are consistent and equitable.

#### Subchapter D, Nonresidential Centers

The proposed amendment to §356.1501, Fiscal Oversight and Accountability, revises the title of the rule to "Oversight and Accountability" and clarifies the role of the board of directors. The proposed amendment also adds the expectations of the board regarding knowledge of the Texas Health and Human Services Commission Family Violence Program grant and the requirement to comply with center complaint policies.

The proposed amendment to §356.1502, Nonresidential Center's Board Handbook, revises the timeframe for board members to receive the board handbook. The proposed amendment also requires the handbook to contain information on the organiza-

tion's efforts to support underserved populations and information on the intersection of family violence and barriers to services for underserved populations.

The proposed amendment to §356.1503, Board of Directors Training, revises the required training to state that it must be provided to board members every year, instead of every two years, and that the board members must receive the training within 60 days of their first term, instead of three months. The proposed amendment removes the requirement for training on the center's insurance coverage. The proposed amendment adds the requirement of training on barriers to services for underserved populations and references the requirements in proposed amended §356.2014, Confidentiality and Victim-Advocate Privilege.

The proposed amendment to §356.1504, Confidentiality, revises the title of the rule to "Confidentiality and Victim-Advocate Privilege" and strengthens board member requirements for knowledge of confidentiality policies. The proposed amendment requires board members to provide written assurance of their knowledge of the victim-advocate privilege under Texas Family Code Chapter 93, which includes their knowledge that they must not use their position to obtain privileged information.

The proposed amendment §356.1605, Requesting a Variance or Waiver, revises the title of the rule to "Requesting a Funding Waiver", clarifies the information that must be submitted to request a waiver, and removes a timeline for submitting the request.

The proposed amendment to §356.1701, Accounting System Requirements, seeks to better align accounting practices with Texas Health and Human Services policy and best practices.

Proposed new §356.1703, Fraud, Waste, and Abuse, outlines the requirement and process for reporting any suspected or confirmed fraud, waste, or abuse of funds paid from the contract, emphasizing that centers must protect victims' personally identifying information when reporting fraud, waste, or abuse.

The proposed amendment to §356.1801, Personnel Policies, revises the requirements of the center's personnel handbook and the timeframe for employee notification of any changes to policy. The proposed amendment requires the handbook to contain information on the center's nondiscrimination policies, complaint process, and response to staff experiencing family violence and violence occurring in the workplace.

The proposed amendment to §356.1802, Personnel Files, requires personnel confidentiality and victim-advocate agreements to be updated annually.

The proposed amendment to §356.1803, Drug and Alcohol Policy, clarifies language about the use and possession of drugs and alcohol.

The proposed amendment to §356.1805, Staff Development, revises the title of the rule to "Ongoing Employee Training" and requires employees to receive information annually on a wide array of topics to better align with best practices in service delivery. Additionally, the proposed amendment requires employees with access to personally identifying information to receive annual training in compliance with the proposed amendment to §356.2014, Confidentiality and Victim-Advocate Privilege Training.

The proposed repeal of §356.1806, Legal Advocate, deletes the rule as no longer necessary to allow for flexibility of staffing and

promote that all staff are able to meet the legal needs of clients served.

The proposed repeal of §356.1807, Volunteer Coordinator, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 no longer requires centers to have a volunteer program.

The proposed amendment to §356.1901, Facility Requirements for the Nonresidential Center, requires centers to clearly mark safety measures, plans, and inspections. The amendment also ensures that cleaning products and other hazardous items are secured out of reach of children. Additionally, the amended section requires centers to keep stocked first-aid kits in central communal areas that are accessible to all employees, volunteers, and program participants.

The proposed amendment to §356.1902, Security System, clarifies the language relating to what security systems at HHSC-funded centers must include.

The proposed amendment to §356.1903, Security Policies and Procedures, requires all HHSC-funded centers to have policies to address threats of violence and public health emergencies. The proposed amendment stipulates that centers must notify HHSC immediately of any safety or security breaches that disrupt services anticipated to last 24 hours or longer.

The proposed amendment to §356.2001, Required Services, strengthens the requirement for centers to ensure access to services is aligned with the Family Violence Prevention and Services Act.

The proposed repeal of §356.2003, Eligibility, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.2003.

Proposed new §356.2003, Eligibility, defines eligibility to include victims of dating violence, as well as victims of sexual assault and human trafficking if those offenses meet the definition of family violence or dating violence. Additionally, the section requires eligibility include serving all eligible victims regardless of their current geographic location.

The proposed amendment to §356.2004, Federal and State Laws Regarding Eligibility, reorders the list of statutes to align with the order of deference given by the courts.

The proposed amendment to §356.2006, Denial of Services, requires centers to provide appropriate referrals to other service providers when denying services.

The proposed amendment to §356.2007, Eligibility of Previously Involuntarily Terminated Program Participants, requires centers to assess each request for service from a person who was previously involuntarily terminated. The proposed amendment states that centers cannot deny services to a participant who was previously involuntarily terminated based only on the participant's previous involuntary termination.

The proposed amendment to §356.2009, Nonresidential Services for a Person Under 18 Years of Age, revises the title of the rule to "Nonresidential Services for a Minor" and clarifies when centers may provide nonresidential services to a minor without obtaining consent from the minor's parent, managing conservator, or guardian.

The proposed amendment to §356.2010, Termination of Services, adds language to require centers to implement grounds for termination that are concerned solely with the safety and se-



curity of center staff and other clients. The proposed amendment allows centers to allow considerations for residents and nonresidents to have contact with an abuser without grounds for termination. Additionally, the proposed amendment allows residents and nonresidents to voluntarily terminate their services at any time.

The proposed amendment to §356.2011, General Confidentiality Policy, revises the title of the rule to "General Confidentiality and Victim-Advocate Privilege Policy" and includes privileged communication requirements between victims and trained family violence center advocates added under Texas Family Code Chapter 93.

The proposed amendment to §356.2012, Confidentiality Information for Adult Program Participants, revises the title of the rule to "Confidentiality and Victim-Advocate Privileged Information for Program Participants" to include privileged communication requirements between victims and trained family violence center advocates added under Texas Family Code Chapter 93. The proposed amendment restricts centers from charging residents and nonresidents a fee when accessing their client records, and adds a requirement when the center cannot provide the information in subsection (a) of the rule in writing.

The proposed amendment to §356.2013, Confidentiality Agreements, revises the title of the rule to "Confidentiality and Victim-Advocate Agreements" and revises the list of people required to sign a confidentiality and victim-advocate privilege agreement. The proposed amendment adds the requirement for centers to have a confidentiality policy for center visitors. The proposed amendment adds requirements for the center when a confidentiality agreement cannot be physically signed.

The proposed amendment to §356.2014, Confidentiality Training, revises the name of the rule to "Confidentiality and Victim-Advocate Privilege Training" and includes requirements for training to employees, board members, contract staff, volunteers, and interns who have access to personally identifying information on victim-advocate privilege and procedures for responding to court orders due to the implementation of Texas Family Code Chapter 93, which implemented victim-advocate privilege for family violence centers.

The proposed amendment to §356.2015, Information in Program Participant Files, revises the title of the rule to "Information in Program Participant Records", replaces "files" with "record", and allows for information to be kept both written and electronically in a program participant's record. It also adds that needs documented should be a survivor-stated need and removes current paragraph (2) because setting goals is not a requirement to receive services.

The proposed amendment to §356.2017, Maintaining Control over Program Participant Files, revises the title of the rule to "Maintaining Control Over Program Participant Records" because "records" is the term used in the rule. The proposed amendment clarifies that program participants may not be charged a fee when accessing their records.

The proposed amendment to §356.2018, Release of Program Participant Information, strengthens the requirements for a center to be able to release a client's information to better align with the requirements of the Family Violence Prevention and Services Act. The amendment also restricts an abuser or suspected abuser of a minor from being allowed to consent to the release of a minor's information.

The proposed repeal of §356.2020, Court Orders, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §356.2022.

The proposed amendment to §356.2021, Procedures Regarding Court Orders, requires the center's written procedures to include a process for notifying victims of a potential release of information and a statement that the center will take steps necessary to protect the privacy and safety of the person. The proposed amendment also adds the requirement for centers to comply with privilege provisions.

The proposed repeal of §356.2022, Notification of Court Orders, deletes the rule as no longer necessary because the content of the rule has been added to proposed amended §356.2021.

The proposed amendment to §356.2024, Minimum Hours for a Nonresidential Center, replaces that a nonresidential center's consistent schedule of service hours "may be regular business hours or other hours as approved by the Health and Human Services Commission" with "that best supports the needs of the community". This change is made to allow for centers to establish business hours that best fit the needs in their community.

The proposed amendment to §356.2026, Disruption in Providing Services, updates the requirement that centers must report disruptions anticipated to last 24 hours or more that may affect the center's ability to provide services. The proposed amendment also requires centers to report details about how services will be maintained immediately to HHSC. This change was made to add a specific time-frame in disruption and clarify what needs to be reported by the center.

The proposed repeal of §356.2028, Cooperation with Criminal Justice Officials, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 created a new category of services to include advocacy focused on civil and criminal legal systems, which has been added in the proposed amendment to §356.701, Shelter Center Services.

The proposed amendment to §356.2029, Community Education, revises the title of the rule to "Community Education and Prevention" and adds prevention education as a component of community education to align with changes to Texas Human Resources Code Chapter 51. The proposed amendment adds underserved communities as a targeted audience and requires centers to comply with proposed new §356.2034 concerning Access to Services for People with a Disability, in their community education efforts.

The proposed repeal of §356.2030, Volunteer Program, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 no longer requires centers to have a volunteer program.

The proposed repeal of §356.2031, Volunteer Recruitment, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 no longer requires centers to have a volunteer program.

The proposed amendment to §356.2033, Content of Training for Non-Direct Service Volunteers, corrects the word "Content" in the title of the rule and includes required training on privileged communications between victims and family violence center trained advocates added under Texas Family Code Chapter 93.

Proposed new §356.2034, Access to Services for People with a Disability, adds requirements for how centers must provide ac-

cess for people with a disability in accordance with the Family Violence Prevention and Services Act. The proposed rule requires centers to serve people with a disability to ensure they have meaningful access to the program, can effectively communicate, and are provided auxiliary aids and services when necessary.

Proposed new §356.2035, Service Model, requires centers to develop, maintain, and comply with a voluntary and trauma-informed service model that respects an individual's needs in accordance with changes to Texas Human Resources Code Chapter 51. The proposed rule requires centers to provide training related to the service model and have a written process to evaluate the service model.

The proposed amendment to §356.2101, Nonresidential Center Services, revises the requirements to align with legislative updates to Texas Human Resources Code Chapter 51, as well as crisis call hotline requirements to be more accessible to people with limited English proficiency and to people with a disability in accordance with the Family Violence Prevention and Services Act.

The proposed amendment to §356.2102, Data Collection, revises the title of the rule to "Reporting Data to HHSC" and clarifies how a center must report data to HHSC. The proposed amendment explains that a center must report to HHSC within two business days if it will have trouble submitting accurate data. The proposed amendment requires a center to notify HHSC via email within 24 hours of discovery if there is a data breach and provide written notification to HHSC by the third business day after discovery of a data breach. The proposed amendment adds a clause regarding a client's option to refuse to provide personal data.

The proposed amendment to §356.2103, Crisis Call Hotline, revises the rule to align with current business practices and accessibility requirements of the Family Violence Prevention and Services Act.

The proposed repeal of §356.2104, Subcontracting the Crisis Call Hotline, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.2104.

Proposed new §356.2104, Transferring the Crisis Call Hotline, stipulates the conditions under which a center may transfer its crisis call hotline.

The proposed amendment to §356.2105, Medical Care, revises a center's resource list requirements to include survivor-centered resources, as well as affordable options and physical, mental, and behavioral health resources. The proposed amendment also requires a center to provide standard first aid medical supplies that are accessible to program participants 24-hours-a-day.

The proposed amendment to §356.2106, Program Participant's Orientation, requires centers to provide orientation to a program participant, in accordance with the Family Violence Prevention and Services Act. The proposed amendment requires that the center keep adequate documentation of the orientation. The proposed amendment clarifies the information that must be shared regarding complaint procedures and adds information on victim-advocate privilege contained within Texas Family Code Chapter 93.

The proposed repeal of §356.2107, Individual Service Plans, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.2107.

Proposed new §356.2107, Needs Assessment, requires the documentation of each resident's and nonresident's self-identified needs and request for services. The proposed amendment emphasizes the voluntary services requirements in 45 CFR §1370.10(b)(10) and in Texas Human Resources Code §51.005(b-1)(1), effective on September 1, 2024. The proposed amendment also requires centers to offer assistance in developing needs assessment plans at each re-entry into the program.

The proposed amendment to §356.2108, Group Intervention, revises the title of the rule to "Support Groups" and clarifies that centers must provide weekly support groups for adult program participants but that attendance must be voluntary.

The proposed repeal of §356.2109, Religion and Intervention Services, deletes the rule as no longer necessary, because the content of the rule will be added to contracts with the centers.

The proposed amendment to §356.2110, Delivery of Children's Direct Services, adds a requirement for providing voluntary, developmentally appropriate services to children.

The proposed repeal of §356.2112, Texas Department of Family and Protective Services' (DFPS) Child Care Permit, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §356.2112.

Proposed new §356.2112, Child Care Permit, contains references to the child care permit regulations under Texas Human Resources Code Chapter 42, and 26 TAC Chapters 743, 745, and 746.

The proposed repeal of §356.2113, Legal Assistance Services, deletes the rule as no longer necessary because Texas Human Resources Code Chapter 51 created a new category of services to include advocacy focused on civil and criminal legal systems, which has been added in the proposed amendment of §356.701, Shelter Center Services.

The proposed repeal of §356.2114, Training and Employment Services, deletes the rule as no longer necessary, because Texas Human Resources Code Chapter 51 no longer requires centers to provide information about training for and seeking employment.

Proposed new §356.2114, Client Assistance Funds, requires that when funds are available, centers must develop, maintain, and comply with policies and procedures regarding victims' access to assistance funds that are consistent and equitable to clients.

Proposed new §356.2115, Counseling Services, outlines how family centers may provide counseling services either by employees, contract staff, interns, or volunteers, or by referral to community resources available. The proposed rule clarifies that centers do not have to pay for outside counseling but must maintain a current list of counseling resources in the community. The proposed rule states that counseling can include varying modalities to meet the mental health and wellness needs of survivors.

Proposed new Subchapter E, Written Notice to Victims

Proposed new §356.2201, Written Notice, requires HHSC to create and maintain a written notice to be provided to victims of family violence, stalking, harassment, or terroristic threat to assist those victims in obtaining services. The proposed new rule outlines the requirements of the creation and availability of the notice.

FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules concern only non-profit entities and therefore do not apply to small or micro-businesses or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, are necessary to receive a source of federal funds or comply with federal law, and are necessary to implement legislation that does not specifically state that Section 2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Crystal Starkey, Deputy Executive Commissioner for Family Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved access to and quality of services for family violence survivors and their children throughout the state.

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 rule does not impose any additional costs or requirements for FVP providers.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R057" in the subject line.

#### SUBCHAPTER A. DEFINITIONS

##### 26 TAC §356.1

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendment affects Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

##### *§356.1. Definitions.*

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

(1) 24-hour-a-day shelter--A Texas Health and Human Services Commission-funded (HHSC-funded) shelter center facility that provides access, admittance, and temporary emergency residence for victims of family violence and their dependents, 24-hours-a-day, every day of the year.

(2) Abuse of funds--Actions and statements that are inconsistent with sound fiscal or business practices, and result in unnecessary program costs, including reimbursement for unnecessary services or services that do not meet standards required by contract, statute, regulation, previously sent interpretations of any of the items listed, or authorized governmental explanations of any of the foregoing.

(3) Advocacy--Providing information and assistance to increase survivor safety and access to needed resources or services. Advocacy is trauma-informed and requires understanding a survivor's self-stated experiences and needs.

(4) Additional HHSC-funded shelter--Additional Texas Health and Human Services Commission-funded shelter. An additional shelter or shelters operated by a shelter center that meets the

criteria in §356.202 and §356.203 of this chapter (relating to Additional HHSC-Funded Shelter Funding and Additional HHSC-Funded Shelter Requirements).

~~[(1) Civil justice system--A network of courts and legal processes that enforce, restore, or protect private and personal rights.]~~

~~(5) Client--A resident, nonresident, or program participant who receives a service from a shelter center, special nonresidential project center, or nonresidential center.~~

~~(6) [(2)] Community education--The efforts or activities performed to increase public awareness, including prevention activities, about family violence and the availability of services for victims of family violence.~~

~~[(3) Cooperation with criminal justice officials--Making efforts on behalf of victims of family violence to:]~~

~~[(A) establish ongoing working relationships with the local criminal justice system, including but not limited to law enforcement, prosecutors, the courts, and probation and parole departments; and]~~

~~[(B) educate the local criminal justice system about family violence and the need for policies that ensure safety for victims of family violence and hold batterers accountable.]~~

~~(7) Complaint--An official written statement of concern or grievance. The term is inclusive of the formal process by which current or former clients or employees may exercise their right to petition a family violence center.~~

~~(8) [(4)] Cooperative living agreement--An agreement between the shelter and residents that promotes health, safety, and daily shelter operations.~~

~~[(5) Criminal justice system--A network of court and legal processes that deals with the enforcement of criminal laws. A crime is an action or omission in violation of law and is an offense against the state.]~~

~~(9) [(6)] Crisis call hotline--A telephone number answered 24-hours-a-day [24 hours a day], every day of the year, by trained [family violence center or special nonresidential project] volunteers, employees, or HHSC-approved [Health and Human Services Commission (HHSC)-approved] service contractors who provide victims of family violence with:~~

~~(A) immediate intervention through safety planning;~~

~~(B) understanding and support;~~

~~(C) information about shelter and nonresidential [center] services; and~~

~~(D) referrals to other supportive services.~~

~~(10) Data breach--Any unauthorized use, disclosure, creation, maintenance, disposal, or transmission of personally identifying information in a manner not permitted by federal or state law.~~

~~(11) [(7)] Dating violence--An act, other than a defensive measure to protect oneself, by an individual that is against another individual with whom that person has or has had a dating relationship and that is:~~

~~(A) intended to result in physical harm, bodily injury, assault, or sexual assault;~~

~~(B) a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault; or~~

~~(C) intended to inflict emotional harm, including an act of emotional abuse.~~

~~[(8) Education arrangements for children--Face-to-face services that result in a resident, nonresident, or program participant child complying with the compulsory attendance requirements found in the Texas Education Code.]~~

~~[(9) Emergency medical care--Assistance in responding to any urgent medical situation for a resident, nonresident, program participant, or victim of family violence being considered for acceptance to or accessing family violence services.]~~

~~[(10) Emergency transportation--Providing or arranging transportation:]~~

~~[(A) to and from emergency medical facilities for a resident, nonresident, program participant, or victim of family violence; or]~~

~~[(B) from a safe place to a shelter for victims of family violence needing shelter within the center's service area.]~~

~~(12) Executive director--The individual acting as the chief administrative or chief executive officer of a family violence center, regardless of the title of the individual's position.~~

~~(13) [(11)] Family violence--An act by a member of a family or household against another member of the family or household that is:~~

~~(A) intended to result in physical harm, bodily injury, [or] assault, or sexual assault;~~

~~(B) a threat that reasonably places the member in fear of imminent physical harm, bodily injury, [or] assault, or sexual assault, but does not include defensive measures to protect oneself; [or]~~

~~(C) intended to inflict emotional harm, including an act of emotional abuse; or[-]~~

~~(D) dating violence.~~

~~[(12) Intervention services--Face-to-face services for a resident, nonresident, or program participant child or adult victim of family violence that:]~~

~~[(A) include:]~~

~~[(i) safety planning;]~~

~~[(ii) understanding and support;]~~

~~[(iii) advocacy;]~~

~~[(iv) case management;]~~

~~[(v) information and education; and]~~

~~[(vi) resource assistance;]~~

~~[(B) are available daily for shelter residents; and]~~

~~[(C) are available during the center's or project's hours of operation for nonresidents or program participants.]~~

~~(14) Fraud--An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to the person making the deception or misrepresentation or some other person. The term does not include unintentional technical, clerical, or administrative errors.~~

~~[(13) Legal assistance--Face-to-face services to the resident, nonresident, or program participant that include:]~~

~~[(A) identifying individual legal needs;]~~

~~[(B) explaining legal rights and options;]~~

~~[(C) providing support and accompaniment in the pursuit of those options;]~~

~~[(D) assisting in safety planning; and]~~

~~[(E) providing advocacy.]~~

(15) Human trafficking--Trafficking that includes:

(A) the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is younger than 18 years of age;

(B) the recruitment, harboring, transportation, provision, enticing, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; and

(C) the offenses described in Texas Penal Code Chapter 20A.

(16) [(14)] Limited English Proficiency (LEP)--A term describing individuals who do not speak English as their primary language and who have limited ability to read, speak, write, or understand English.

(17) [(15)] Nonresident--An adult or child victim of family violence who receives services from an HHSC-funded shelter center without receiving shelter or is served through a nonresidential center.

(18) [(16)] Nonresidential center--An HHSC-funded program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive nonresidential services to victims of family violence as outlined in §356.2101 of this chapter (relating to Nonresidential Center Services) [described in the Service Delivery section of the HHSC Family Violence Program Nonresidential Center Provider Manual].

(19) Personally identifying information--Individually identifying information for or about an individual including information likely to disclose the location of a victim of family violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including a first and last name; a home or other physical address; contact information (including a postal, email, or Internet protocol address, or telephone or facsimile number); a social security number, driver license number, passport number, or student identification number; and any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify an individual.

(20) Primary prevention--Strategies, policies, and programs to stop both first-time perpetration and first-time victimization. Primary prevention is stopping family and dating violence before the violence occurs. Primary prevention includes:

(A) school-based violence prevention curricula;

(B) programs aimed at mitigating the effects on children of witnessing family or dating violence;

(C) community campaigns designed to alter norms and values conducive to family or dating violence;

(D) worksite prevention programs; and

(E) training and education in parenting skills and self-esteem enhancement.

(21) [(17)] Program participant--An adult or child victim of family violence who receives services from an HHSC-funded nonresidential center or special nonresidential project.

[(18) Referral system to existing community services--An organized process for providing information and referring residents, nonresidents, or program participants to existing community resources, including but not limited to:]

[(A) medical care;]

[(B) legal representation;]

[(C) protective services for abuse of:]

[(i) children;]

[(ii) the elderly; and]

[(iii) people with disabilities;]

[(D) resource assistance;]

[(E) public assistance;]

[(F) counseling and treatment services;]

[(G) children's services; and]

[(H) other appropriate family violence services.]

(22) [(19)] Resident--An adult or child victim of family violence or dating violence who is admitted to a [an (HHSC)-funded] shelter center.

[(20) Satellite shelter--An additional shelter operated by a shelter center that meets the criteria stated in these sections.]

(23) Secondary prevention--As defined by 45 Code of Federal Regulations (C.F.R.) §1370.2, identifying risk factors or problems that may lead to future family, domestic, or dating violence, and taking the necessary actions to eliminate the risk factors and the potential problem.

(24) [(21)] Shelter center--An HHSC-funded program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of family violence as described in §356.701 of this chapter (relating to Shelter Center Services) [the Service Delivery section of the HHSC Family Violence Program Shelter Center Provider Manual].

(25) [(22)] Special nonresidential project center--An HHSC-funded [A] project that:

(A) is operated by a public or private nonprofit organization; and

(B) provides at least one specialized family violence service as described in §356.1401 of this chapter (relating to Special Nonresidential Project Services). [the Service Delivery section of the HHSC Family Violence Special Nonresidential Project Provider Manual, which can be:]

[(i) community education relating to family violence; or]

[(ii) direct delivery of services for adult victims of family violence or their children;]

~~[(C) demonstrates a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;]~~

~~[(D) demonstrates that the project, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Human Resources Code, §51.0021; and]~~

~~[(E) demonstrates that the underserved or special population to be served by the project is involved in the project's design and implementation, if applicable.]~~

~~(26) [(23)] Standards--The minimum HHSC requirements as stated in this chapter.~~

~~[(24) Training and employment information--Providing information and referrals to residents, nonresidents, or program participants about employment training and employment opportunities, either directly or through formal arrangements with other organizations.]~~

~~[(25) Twenty-four-hour-a-day shelter--An HHSC-funded shelter center facility that provides access, admittance, and temporary emergency residence for victims of family violence 24 hours a day, every day of the year.]~~

~~(27) [(26)] Victim of family violence--Includes:~~

~~(A) an adult member of a family or household who is subjected to an act of family violence;~~

~~(B) a member of the household of the adult described in subparagraph (A) of this paragraph, other than the member of the household who commits the act of family violence, including an act of emotional abuse;~~

~~[(C) victims not directly served by an HHSC family violence provider;]~~

~~(C) [(D)] a member of the family or household who may have been subjected to sexual abuse [by a batterer]; and~~

~~(D) [(E)] an individual who is subjected to an act of [a victim of] dating violence.~~

~~[(27) Volunteer recruitment and training program--A process for soliciting a diverse group of people from the community to work as non-paid staff and providing them with information about family violence and services for victims of family violence through a structured orientation.]~~

~~(28) Waste--Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.~~

~~(29) Written--When referring to any documentation, agreements, signage, materials, and other information or resources provided in writing to residents, nonresidents, or program participants, the term "written" encompasses information in digital format and any necessary accommodations for residents, nonresidents, or program participants with LEP, low literacy, visual impairment, and intellectual and developmental disabilities to ensure that the person is informed of all materials and relevant documents typically produced in writing. Accommodations may include:~~

- ~~(A) verbal explanations;~~
- ~~(B) pictograms;~~
- ~~(C) translation;~~
- ~~(D) interpretation; and~~
- ~~(E) large-print materials.~~

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## SUBCHAPTER B. SHELTER CENTERS DIVISION 1. BOARD OF DIRECTORS

### 26 TAC §§356.101 - 356.104

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.101. [Fiscal] Oversight and Accountability.*

The board of directors of a shelter center must:

(1) ensure [Ensure] that the center operates in a manner that keeps the organization's mission and purpose focused without becoming involved in day-to-day operations;

(2) hire [Hire] the center's executive director, and explain the following[:];

(A) the role of the board in supervising and evaluating the executive director;

(B) the structures in place for evaluation; and

(C) an overview of the board's and executive director's duties;

(3) review regularly, as-a-whole, [As a whole,] or as delegated to the center's finance committee, [regularly review] actual revenue and expenditures and compare them to budgeted revenue and estimated costs;

(4) review [Review] and approve programs and budgets in accordance with the bylaws;

(5) maintain [Maintain] and comply with current organizational bylaws; [and]

(6) review [Review] and approve policies for the organization's operation in accordance with the bylaws;[-]

(7) ensure that all board members are knowledgeable of all grant expectations as the grant expectations pertain to board members and their responsibilities under the Texas Health and Human Services Commission Family Violence Program shelter grant;

(8) review and comply with the center's complaint policy and address any complaints escalated to the board; and

(9) as a whole, or as delegated to board committee, review and approve program policy changes.

§356.102. *Shelter Center's Board Handbook.*

(a) The board members must be given a handbook within 60 days of starting their first term that contains[-; at a minimum,] the following:

- (1) the board member's [Board member] job description;
- (2) a current [Current] list of board members with current contact information;
- (3) the organization's [Organization's] mission statement;
- (4) the organization's [Organization's] bylaws and a copy of the letter granting 501(c)(3) status;
- (5) a list [List] of all committees, including appointed board members and assigned staff;
- (6) committee [Committee] descriptions;
- (7) the organization's [The organization] policies, including fiscal, administrative, and programmatic;
- (8) the organizational [Organizational] chart;
- (9) the history [History] of the organization;
- (10) a list [List] of program services and a brief description of each program;
- (11) the current [Current] budget, including funding sources and subcontractors;
- (12) a brief [Brief] description of contract provisions with attorneys, auditors, or other professionals;
- (13) an explanation of the organization's insurance coverage, including directors' and officers' liability insurance or notification of inability to obtain insurance;
- (14) [(43)] basic [Basic] information about family violence; [and]
- (15) [(44)] a brief [Brief] history of the Texas Family Violence [Battered Women's] Movement;[-]
- (16) an explanation of the organization's efforts to support underserved populations; and
- (17) information on the intersection of family violence and barriers to services for underserved populations as well as a description of the organization's client and community demographics.

(b) The handbook may be made available in an electronic format.

§356.103. *Board of Directors Training.*

(a) Every year [two years], each board member must receive the following:

(1) an [An] explanation of the center's mission, philosophy, and a brief history;

(2) a discussion [An explanation] of the dynamics of family violence that includes power and control and trauma-informed services [its causes and effects];

(3) a [A] description of the organization's current programs[-; provided by program staff];

(4) a [A] review of the organization's policies to determine if any modifications need to be made and clarification of any policy changes made during the previous year;

(5) training that includes information on the intersection of family violence and barriers to services for underserved populations as well as a description of the organization's client and community demographics;

(6) [(5)] an [An] explanation of how the center is funded and future funding projections;

(7) [(6)] a [A] discussion, presented by the appropriate board member, employee, or designated person [ chair or a member of the executive committee], of the following:

(A) a review of the duties of a nonprofit board of directors as outlined in the Texas Business Organizations Code §22.221, Texas Nonprofit Corporation Act;

(B) [(A)] the [The] board's role and responsibilities related to legal and fiscal accountability; and

(C) the current bylaws, including a discussion on:  
(i) [(B)] meetings [Meetings] and attendance requirements;

(ii) [(C)] committee [Committee] duties, structure, and assignments; [and]

(iii) [(D)] fundraising [Fund-raising] and public relations responsibilities; and

(iv) the conflict of interest policy.

[(7)] An explanation of the organization's insurance coverage, including director's and officers liability insurance or notification of inability to obtain insurance;]

(8) an [An] explanation of the working relationship between the board and staff, including[-; but not limited to] which staff member to contact [is contacted] regarding questions or requests and which staff members contact board members routinely; and

[(9)] An update on any changes made in the Business Organizations Code, Chapter 22; and]

(9) [(40)] the [The] organization's confidentiality policy and the importance of confidentiality, which must include the training required by §356.616 of this chapter (regarding Confidentiality and Victim-Advocate Privilege Training).

(b) New board members must [should] receive this training within 60 days [three months] of starting their first term.

§356.104. *Confidentiality and Victim-Advocate Privilege.*

Each board member must:

(1) provide written assurance that the member is knowledgeable of and will [Know and] comply with the confidentiality requirements of this chapter [Health and Human Services Commission's rules] and the center's policies [related to confidentiality]; [and]

(2) provide [Provide] written assurance to the center that the board member [she or he] will not use the position to obtain or

access confidential resident or nonresident information when not authorized; and~~[-]~~

(3) provide written assurance to the center that the member is knowledgeable of, and will comply with, the victim-advocate privilege under Texas Family Code Chapter 93 and will not use the member's position to obtain or access privileged resident or nonresident information when not authorized.

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## DIVISION 2. CONTRACT STANDARDS

### 26 TAC §§356.201 - 356.206, 356.208

#### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new section affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

#### §356.201. *Special Nonresidential Project Contract.*

A center may apply for a special nonresidential project contract; however, the proposed services may not ~~cannot~~ be the same as those required under this subchapter ~~by the shelter center contract~~.

#### §356.202. *Additional HHSC-Funded [Satellite] Shelter Funding.*

In order to qualify for additional ~~satellite~~ shelter funding, a shelter ~~the~~ center must:

(1) be ~~Be~~ a current Texas Health and Human Services Commission (HHSC) shelter center grantee ~~contractor~~ in good standing;

(2) develop ~~Develop~~, maintain, and comply with written policies and procedures that describe the relationship between the shelter center and the additional ~~satellite~~ shelter; and

(3) ensure ~~Ensure~~ the additional ~~satellite~~ shelter meets all additional ~~satellite~~ shelter requirements in §356.203 ~~§379.203~~ of

this division (relating to Additional HHSC-Funded [Satellite] Shelter Requirements).

#### §356.203. *Additional HHSC-Funded [Satellite] Shelter Requirements.*

A center with more than one Texas Health and Human Services Commission (HHSC)-funded [A satellite] shelter must ensure that additional shelters:

(1) have ~~Have~~ a freestanding shelter building in which residents are sheltered;

(2) provide nonresidential services in the additional shelter ~~Serve nonresidents from the satellite~~ service area;

(3) provide services to an unserved or underserved population or geographic location as consistent with the current Texas Family Violence Services Plan;

~~{(3) Either:}~~

~~{(A) Be in an area that prohibits resident and nonresident access to existing shelter center services because of difficulty or distance; or}~~

~~{(B) Provide services to an unserved or underserved population as demonstrated by its Family Violence Services Plan's consistency with Human Resources Code, §51.0021;}~~

(4) provide ~~Provide~~ the same services as a 24-hour-a-day shelter;

(5) have ~~Have~~ local community representation on the center's board of directors;

(6) have financial ~~Have local funding and local volunteer~~ support;

(7) have ~~Have~~ been operational for at least one year preceding the fiscal year for which funding is requested;

(8) have ~~Have~~ housed residents in the past year; and

(9) have ~~Have~~ at least one employee or volunteer;

~~(A) on-site continuously when a resident is [residents are] staying in the shelter; or[-]~~

~~(B) on-site or on-call 24-hours-a day, every day of the year, when no residents are staying in the shelter.~~

#### §356.204. *Internal Monitoring System.*

A center must develop, maintain, and comply with a written internal monitoring system to evaluate:

(1) the ~~The~~ quality of the center's required resident and nonresident services;

(2) the ~~The~~ accuracy of the fiscal and programmatic documentation; and

(3) compliance ~~Compliance~~ with the policies and procedures specified in the center's contract with the Texas Health and Human Services Commission.

#### §356.205. *Funding Waivers.*

(a) The Texas Health and Human Services Commission (HHSC) may waive the maximum prescribed funding percentage, as described in Texas Human Resources Code §51.003(a), when [at least] one of the following occurs.~~[-]~~

(1) The center's income for the contract year decreased relative to the actual income received during the previous contract year. Decreases in funding caused by a center's noncompliance, negligence, or deficiencies will not be considered when making this calculation.



(2) The center's HHSC award for center services increases.

(b) If a center receives three or more funding waivers in a five-year period, the center may be subject to corrective action.

§356.206. Requesting a Funding [Variance or] Waiver.

[(a)] To request a waiver from the maximum prescribed funding percentage, a center's board must submit:

(1) a completed Family Violence Program Waiver Request Form prescribed by the Texas Health and Human Services Commission [(HHSC)];

(2) supporting documentation of the need for the waiver; and

(3) a statement describing [demonstrating] the center's efforts to raise funds compared to its budget. [; and]

[(3) a written agreement to receive technical assistance as designated by HHSC.]

[(b) To request a variance or waiver from any other requirement in this subchapter, the center's board must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver.]

[(c) A center's board may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.]

§356.208. Primary Services to an Unserved or Underserved Population.

If a center's purpose is to provide services to a particular population, the center must have a plan for providing services to otherwise eligible victims who are not members of the targeted population. This plan may include referrals.

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## DIVISION 2. CONTRACT STANDARDS

### 26 TAC §356.207

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023,

which made several changes to requirements for contracts with family violence centers.

The repeal affects Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.207. More than One Funding Percentage Waiver.

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

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## DIVISION 3. FISCAL MANAGEMENT

### 26 TAC §§356.301 - 356.303

#### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new section affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.301. Accounting System Requirements.

A center must maintain an accounting system and records that:

(1) follow Generally Accepted Accounting Principles (GAAP);

(2) [(+) records revenue and expenditures [using generally accepted accounting principles];

(3) [(2)] establishes [includes] a chart of accounts that lists all accounts by an assigned number;

(4) [(3)] contains a general ledger and subsidiary ledgers;

(5) [(4)] maintains accounting [supporting] documentation for all revenue and expenditures, including [but not limited to]:

(A) receipts or vouchers for revenue;

(B) bank statements reconciled to the general ledger bank accounts;

(C) journal entry justification;

(D) [~~(C)~~] canceled checks;

(E) [~~(D)~~] deposit slips;

(F) [~~(E)~~] approved invoices;

(G) [~~(F)~~] receipts;

(H) [~~(G)~~] leases;

(I) [~~(H)~~] contracts;

(J) [~~(I)~~] time and activity sheets;

(K) [~~(J)~~] inventory; and

(L) [~~(K)~~] cost allocation and indirect cost worksheets;

(6) [(5)] identifies all funding sources and expenditures by separate fund type; and

(7) [(6)] uses a double-entry accounting system, either cash, accrual, or modified accrual.

§356.302. Cash or Non-Cash Resources [Cash/Non-Cash] Documentation.

A center must develop, maintain, and comply with written internal policies and procedures to accurately document the non-Texas Health [non-Health] and Human Services Commission (HHSC) cash or non-cash [cash/non-cash] resources required by HHSC under Texas Human Resources Code [§] §51.003.

§356.303. Fraud, Waste, and Abuse.

(a) A center must immediately report to the Texas Health and Human Services Commission (HHSC) Family Violence Program and HHSC Office of Inspector General any suspected or confirmed fraud, waste, or abuse of funds paid from the HHSC contract related to family violence service delivery, whether or not such suspected or confirmed fraud, waste, or abuse was committed by the center's employees or the center's subcontractors.

(b) In addition to reporting to HHSC, the center must also report the fraud, waste, or abuse to the Office of Attorney General of Texas or the State Auditor's Office.

(c) The center must fully cooperate with HHSC, the Office of Attorney General of Texas, the State Auditor's Office, or any other state or federal regulatory agency involved in the investigation of the allegation of fraud, waste, or abuse.

(d) A center must not unlawfully disclose any personally identifying information of a victim in the course of reporting fraud, waste, or abuse.

(e) The center must comply with 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act, and Texas Family Code Chapter 93 during the investigation.

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DIVISION 4. PERSONNEL

26 TAC §§356.401 - 356.403, 356.405

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.401. Personnel Policies.

A center must develop, maintain, and comply with written personnel policies, approved by the board [Board] of directors [Directors], and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook. Employees [and] must be notified of new or changed personnel policies in accordance with the center policies and in a timely manner. The handbook must address [at a minimum] the following:

(1) contract [Contract] labor;

(2) conflicts [Conflict] of interest;

(3) family [Domestic] violence in the workplace to include support for any staff experiencing family violence and violence occurring at the workplace;

(4) nepotism [Nepotism];

(5) the center's non-discrimination policy;

(6) [(5)] a hiring [Hiring] process that is uniform for all candidates for a particular position and includes:

(A) job [Job] posting;

(B) job [Job] descriptions with essential job functions;

(C) interviewing procedures [Interviewing systems];

and

(D) reference [Reference] checking and responding to reference checking;

(7) [(6)] rules [Rules] of conduct;

(8) [(7)] hours [Hours] and days of operation;

(9) [(8)] employee [Employee] benefits, including the accrual and use of paid time off [leave];

(10) [(9)] employees' [Employees'] right to access their personnel files;

(11) [(10)] written [Written] and oral employee orientation, initial training, and employee development;

(12) ~~[(11)]~~ confidentiality [~~Confidentiality~~] requirements of employee records;

(13) ~~[(12)]~~ employee [~~Employee~~] evaluation;

(14) ~~[(13)]~~ involuntary [~~Involuntary~~] and voluntary termination; and

(15) ~~[(14)]~~ a complaint process for [~~Grievances originating from~~] current and former employees, including the center's process for responding to a complaint.

§356.402. *Personnel Files.*

A center must maintain a personnel file for each employee. Each file must include at least the following information:

(1) employment [~~Employment~~] application or resume;

(2) current job [~~Job~~] descriptions;

(3) signed [~~Signed~~] acknowledgment of confidentiality and victim-advocate privilege agreement to be updated annually;

(4) signed [~~Signed~~] acknowledgment of receipt of the current personnel [~~policies and procedures~~] handbook as described in §356.401 of this division (relating to Personnel Policies);

(5) performance [~~Performance~~] evaluations for every year of employment in accordance with the center's personnel policies;

(6) documentation [~~Documentation~~] of orientation, initial training, and employee development;

(7) any [~~Any~~] status or classification change;

(8) all [~~All~~] disciplinary actions and related documents, if any; and

(9) letters [~~Letters~~] of praise or criticism, if any.

§356.403. *Drug and Alcohol Policy.*

If under the jurisdiction of the Drug-Free Workplace Act, a center must develop, maintain, and comply with a written drug and alcohol policy that includes [~~at least~~] the following:

(1) prohibition [~~Prohibition~~] of [~~illegal~~] use or [~~illegal~~] possession of alcohol, illegal drugs, or drugs for which the employee does not have a prescription, if a prescription is required to possess the drug, while on duty;

(2) a statement of practice rooted [~~A belief~~] in a treatment and recovery approach;

(3) a [~~A~~] stated concern for employees and the [~~their~~] recovery efforts of employees;

(4) information [~~Information~~] on available programs and systems for assistance; and

(5) a [~~A~~] statement of confidentiality.

§356.405. *Ongoing Employee Training* [~~Staff Development~~].

(a) Every year, each employee must receive oral or written information regarding:

(1) confidentiality and victim-advocate privilege requirements, including the center's policies for complying with the requirements;

(2) federal, state, and program requirements as applicable to an employee's job description, including the requirements outlined in:

(A) this subchapter;

(B) 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act; and

(C) the Texas Health and Human Services Commission contract related to family violence service delivery; and

(3) information on the intersection of family violence and barriers to underserved populations, as well as a description of the organization's client and community demographics.

~~[(a)]~~ Direct service employees and their direct supervisors must receive relevant training or staff development on topics related to their job descriptions as family violence center employees.]

(b) Direct service employees and their supervisors must also receive yearly training on the following:

(1) best practices in family violence service delivery, including:

(A) trauma-informed and survivor-centered advocacy and voluntary services;

(B) access to services for underserved populations, including populations with disabilities;

(C) the intersection of family violence and mental health;

(D) the intersection of family violence and substance use;

(E) technology and data safety; and

(F) language and interpretation accessibility; and

(2) relevant training or staff development on topics related to their job descriptions as family violence center employees.

(c) ~~[(b)]~~ Direct service supervisors must [~~should~~] receive training that is relevant to the job descriptions of the people they supervise.

(d) Employees with access to personally identifying information must receive yearly training in compliance with §356.616 of this subchapter (relating to Confidentiality and Victim-Advocate Privilege Training).

(e) ~~[(e)]~~ The training described in this section [~~Training~~] may be provided virtually or in person [~~electronically~~].

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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**26 TAC §§356.406 - 356.408**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas

Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.406. *Children's Advocate.*

§356.407. *Legal Advocate.*

§356.408. *Volunteer Coordinator.*

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## DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

### 26 TAC §§356.501, 356.503 - 356.507, 356.510

#### STATUTORY AUTHORITY

The amendments authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affects Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.501. *Facility Requirements for the 24-Hour-a-Day Shelter Center.*

A center facility must have:

- (1) a kitchen and eating area;
- (2) a group living area;

(3) bathroom facilities, including toilets, lavatories, and bathing facilities;

(4) sleeping facilities;

(5) a private meeting area for individual and group services;

(6) adequate safe space for children;

(7) a developmentally appropriate, safe indoor play space equipped with toys in good repair and arts and craft supplies;

(8) a developmentally appropriate, safe outdoor play area equipped with toys in good repair;

(9) basic furnishings that are clean and in good repair, including:

(A) beds and bed linens;

(B) cribs;

(C) dining room tables;

(D) chairs;

(E) highchairs; and

(F) a place to store clothes, such as drawers or closets;

(10) clearly marked exits;

(11) smoke detectors, fire extinguishers, current fire inspections, and fire evacuation plans;

(12) [(11)] secure [safe], clearly marked locations to store cleansers, solvents, and other hazardous items out of reach of children; and

(13) [(12)] a stocked first-aid kit in all center facilities in central locations and communal spaces, as specified by center policy, that is accessible to all employees, volunteers, and residents.

§356.503. *Security System.*

All Texas Health and Human Services Commission-funded shelter centers [Centers and satellite shelters] must have security systems that are operational 24-hours-a-day [24 hours a day]. The security system must [may] include[, but is not limited to,] an alarm system, outside special lighting, and secure locks [dead bolts, and agreements with local law enforcement].

§356.504. *Security Policies and Procedures.*

(a) All Texas Health and Human Services Commission (HHSC)-funded shelter centers [Centers and satellite shelters] must develop, maintain, and comply with written policies and procedures to promote the safety and security of residents, nonresidents, employees, and volunteers. These policies and procedures must address:

(1) intruders on the property, including an abuser [such as a batterer];

(2) threats of violence or assaults;

(3) bomb threats;

(4) threatening telephone calls;

(5) power outages;

(6) evacuations;

(7) natural disasters (e.g., hurricanes, tornadoes, floods, and fires); [and]

(8) epidemics, pandemics, and other public health emergencies; and

(9) [(8)] technology safety and data security.

(b) A center must notify HHSC immediately of any safety or security breaches listed in subsection (a) of this section that may disrupt services for 24 hours or longer, in accordance with §356.626 of this subchapter (relating to Disruption in Providing Services). A center must include in the notice to HHSC an overview of the incident with the dates of impact, next steps, and a point of contact.

(c) The authorized person or persons responsible for the operation of a center may choose to make the location of emergency shelters public. If the address or location of any shelter center remains confidential, the location shall not be made public, except with written authorization of the individual or individuals responsible for the shelter operation.

(d) A center that chooses to remain confidential pursuant to subsection (c) of this section must develop and maintain systems and protocols to remain confidential.

§356.505. *Shelter Center [and Satellite Shelter] Staffing.*

All Texas Health and Human Services Commission-funded centers [Centers and satellite shelters] must have at least one employee or volunteer:

(1) on-site continuously when a resident is [residents are] staying in the shelter; or[, except if using safe homes]

(2) on-site or on-call 24-hours-a day, every day of the year, when no residents are staying in the shelter.

§356.506. *Providing Hygiene Items to Residents.*

A [~~The~~] center must provide all residents with direct [~~daily~~] access to [~~basic~~] personal hygiene items without having to request the items from staff. When providing personal hygiene items, a [~~the~~] center must consider the diverse needs of the population of the shelter service area.

§356.507. *Types of Facilities Allowed by the Texas Health and Human Services Commission for a 24-hour-a-Day Shelter.*

A 24-hour-a-day shelter may [~~can~~] be located in the following types of facilities:

- (1) a facility that exclusively serves victims of family violence;
- (2) a series of safe homes; or
- (3) a designated section of another kind of emergency shelter.

§356.510. *Using a Hotel or Motel as a Type of Shelter.*

(a) A hotel or motel may not [~~Motels cannot~~] be used exclusively as a shelter center [~~facility~~] for a 24-hour-a-day shelter but may [~~can~~] be used for overflow or used in outlying counties.

(b) A trained staff member or volunteer must make themselves available to clients residing in hotels or motels, either in-person or remotely, at least once every 24-hour period to ensure that services are offered and that meals or adequate food and supplies to prepare meals are provided.

(c) Clients residing in hotels or motels must have access to all services that shelter residents receive in the center.

(d) When clients residing in hotels or motels prefer to have an in-person visit, the center must send a trained staff member or volunteer within a reasonable timeframe, as outlined in center policies.

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**26 TAC §356.508**

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeal affects Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.508. *Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day Shelter.*

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**DIVISION 6. PROGRAM ADMINISTRATION**

**26 TAC §§356.601 - 356.604, 356.606, 356.607, 356.609 - 356.621, 356.623, 356.626, 356.627, 356.629, 356.631, 356.635 - 356.637**

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources

Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new sections affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.601. Required Services.*

At a minimum, a ~~the~~ center must provide equal access to the services for victims of family violence ~~that are~~ outlined in 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act, and ~~the~~ Texas Human Resources Code ~~§~~ Chapter 51.

*§356.602. Charging for Services.*

A center may not ~~cannot~~ charge or solicit contributions or donations in return for Texas Health and Human Services Commission-contracted services.

*§356.603. Eligibility.*

(a) The following individuals are eligible for services under this chapter:

- (1) victims of family violence and dating violence; and
- (2) victims of sexual assault and human trafficking when the sexual assault and human trafficking meets the definition of family violence or dating violence.

(b) All victims described in this section are eligible for services regardless of the victim's current geographic location.

(c) A center must not require a victim to participate in center activities as a condition of receiving shelter or services.

*§356.604. Federal and State Laws Regarding Eligibility.*

When determining eligibility for services, a center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

~~[(1) Human Resources Code, Chapter 51;]~~

~~(1) [(2)] 42 United States Code (U.S.C.) §2000d, et seq., Title VI of the Civil Rights Act of 1964 [(Public Law 88 - 352)];~~

~~(2) [(3)] 29 U.S.C. §701, et seq., Section 504 of the Rehabilitation Act of 1973 [(Public Law 93 - 112)];~~

~~(3) [(4)] 42 U.S.C. §12101, et seq., Americans with Disabilities Act of 1990 [(Public Law 101 - 336)];~~

~~(4) [(5)] 42 U.S.C. §§6101 - 6107, Age Discrimination Act of 1975 [(42 U.S.C. §§6101 - 6107)];~~

~~(5) 42 U.S.C. Chapter 110, the Family Violence Prevention and Services Act;~~

~~(6) Texas Human Resources Code Chapter 51;~~

~~(7) Texas Health and Safety Code §85.113, relating to Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and~~

~~(8) [(6)] Texas Health and Human Services Commission regulations regarding civil rights.[]~~

~~[(7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS; and]~~

~~[(8) the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110).]~~

*§356.606. Denial of Services.*

A center may not ~~can~~ deny services to an otherwise eligible victim as described in §356.603 of this division (relating to Eligibility) unless the center adopts [of family violence only if it has] written policies in accordance with this section that outline specific behaviors that would make a victim ineligible for such services. Under this section, these [These] policies must:

(1) address only behaviors that threaten the safety and security of shelter staff and residents;

(2) apply equally to all people;

(3) comply with the laws and regulations described in §356.604 [§379.604] of this division (relating to Federal and State Laws Regarding Eligibility); and

(4) contain procedures that take into consideration the safety of a victim and requires appropriate referrals to other service providers.

*§356.607. Eligibility of Previously Involuntarily Terminated Residents or Nonresidents.*

(a) A center must develop, maintain, and comply with written policies and procedures to assess the safety [and appropriateness] of providing services to a resident or nonresident [victim] whose services were previously involuntarily terminated and who is currently requesting services.

(b) A center must assess each request for service from a person who was previously involuntarily terminated.

(c) A center may not deny services to a victim who was previously involuntarily terminated based solely on the victim's previous involuntary termination.

*§356.609. Shelter [Services] at Capacity.*

A center must develop, maintain, and comply with ~~written referral~~ procedures for helping a victim [victims of family violence] obtain other temporary shelter if the center's primary method of providing shelter is full. The procedure must include providing the victim with:

(1) safety planning;

(2) referrals to community resources; and

(3) the explanation of nonresidential services and referral to connect with a nonresidential advocate if the victim chooses.

*§356.610. Emergency Shelter or Care for a [an Unaccompanied] Minor.*

(a) For purposes of this section [division], the following words and terms have the following meanings:

(1) "Emergency shelter or care" means shelter or care provided by a shelter center under Texas Family Code §32.201 and §32.202.

(2) "Minor" means 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 for general purposes.

~~[(3) "Unaccompanied minor" means a minor who is not accompanied at the shelter center by the minor's parent, managing conservator, or guardian.]~~

(b) A shelter center may provide emergency shelter or care to a [an unaccompanied] minor and the minor's child or children, if

any, only during an emergency constituting an immediate danger to the physical health and safety of the minor or the minor's children [child(ren)].

(c) Except as provided in subsection (d) of this section, a shelter center may not provide emergency shelter or care to a [an unaccompanied] minor or the minor's children [child(ren)] after the 15th day following the date on which the center began to provide the shelter or care.

(d) With or without the consent of the minor's parent, managing conservator, or guardian, the shelter center may continue to offer emergency shelter or care to a [an unaccompanied] minor and the minor's children [child(ren)], if any, after the 15th day if the minor:

(1) is unmarried and is pregnant or is the parent of a child;

(2) has qualified for financial assistance under Texas Human Resources Code, Chapter 31, and is on the waiting list for housing assistance; or

(3) is 16 years of age or older; and

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income.

(e) A [The] shelter center may rely on the minor's written statement containing the grounds on which the minor has the capacity to consent to emergency shelter or care.

(f) A victim who is under 18 years of age [of family violence under 18 years of age] may consent to 24-hour-a-day shelter services provided by a shelter center, at any time and for any duration, if:

(1) the victim is married or has been married; or

(2) the victim has had the disabilities of minority removed for general purposes [(i.e., is legally emancipated)].

§356.611. *Nonresidential Services for a Minor* [Person Under 18 Years of Age].

(a) For the purposes of this section, "minor" means a person under 18 years of age who:

(1) is not and has not been married; or

(2) has not had the disabilities of minority removed for general purposes.

(b) [(a)] A shelter center may provide a nonresidential service to a minor if:

(1) the center provides emergency shelter or care to the minor under §356.610 [§379.610] of this division [subchapter] (relating to Emergency Shelter or Care for a [an Unaccompanied] Minor);

(2) the minor consents to counseling from a licensed or certified physician, psychologist, counselor, or social worker, under Texas Family Code §32.004, for:

(A) suicide prevention;

(B) chemical addiction or dependency; or

(C) sexual, physical, or emotional abuse;

(3) the center obtains [has] consent from the minor's parent, managing conservator, or guardian to provide the minor with the nonresidential service; or

(4) the center otherwise complies with Texas Family Code[.] Chapter 32, even if the center does not obtain consent from the minor's parent, managing conservator, or guardian.

(c) [(b)] Notwithstanding subsection (b) [(a)] of this section, a victim who is [of family violence] under 18 years of age may consent to a nonresidential service provided by a shelter center if:

(1) the victim is married or has been married; or

(2) the victim has had the disabilities of minority removed for general purposes [(i.e., is legally emancipated)].

§356.612. *Termination of Services.*

(a) A center must develop, maintain, and comply with written policies and procedures that:

(1) outline behaviors that threaten the safety and security of [shelter] staff, other [and] residents, and nonresidents for which the center may terminate services [can be terminated];

(2) do not allow for termination of a resident's or nonresident's services, for any reason other than behaviors that threaten the safety and security of shelter staff, other residents, and nonresidents;

(3) allow considerations for residents and nonresidents to have contact with an abuser without grounds for termination;

(4) [(2)] address how current and former residents and nonresidents can appeal terminations and file complaints [grievances] with the center;

(5) [(3)] apply equally to all people; and

(6) [(4)] comply with: [the Americans with Disabilities Act, Title VI of the Civil Rights Act, §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable laws and regulations.]

(A) the laws and regulations described in §356.604 of this division (relating to Federal and State Laws Regarding Eligibility); and

(B) other applicable laws and regulations; and

(7) allow a resident or nonresident to voluntarily terminate their services at any time.

(b) Before the termination of [When terminating] services to a resident or a nonresident, regardless of [the residents or nonresidents,] whether the resident's or nonresident's termination is voluntary or involuntary [voluntarily or involuntarily], the center must make reasonable efforts to:

(1) assist the resident [residents] or nonresident [nonresidents] in re-evaluating the resident's or nonresident's [their] safety plan [plans];

(2) assist in obtaining alternate resources for the resident or nonresident [residents] whose services are terminated;

(3) provide written notice to the resident [residents] or nonresident [nonresidents] of the termination;

(4) provide written notice to the resident or nonresident of the right to file a complaint [grievance] with the center and an [the] explanation of the center's complaint [grievance] procedure; and

(5) upon request of the resident [residents] or nonresident [nonresidents], provide contact information for the Texas Health and Human Services Commission Family Violence Program for complaint purposes.

§356.613. General Confidentiality and Victim-Advocate Privilege Policy.

A center must have a written general confidentiality and victim-advocate privilege policy that provides:

(1) that the center will keep all information about a resident or nonresident [will be kept] confidential, including all personally identifying [personal] information and all communications, observations, and information made by and between or about adult and child residents and nonresidents, employees, contract staff, volunteers, [student] interns, and board members;

(2) a statement about the importance of confidentiality and victim-advocate privilege in maintaining the safety of:

- (A) victims;
- (B) victims' families;
- (C) volunteers;
- (D) employees; and
- (E) others related to the program;

(3) the parameters of what must be held confidential and by whom, including internal communications between staff regarding residents and nonresidents [clients];

(4) the limits of confidentiality under the law;

(5) the parameters of what must be held privileged, if claimed, and by whom, including internal communications between staff regarding residents and nonresidents;

(6) the limits of any victim-advocate privileged information under the law;

(7) [(5)] a designation of custodian of the records, including digital records; and

(8) [(6)] procedures for:

- (A) retention and destruction of records;
- (B) responses to court orders;
- (C) release of information;
- (D) reports of abuse or suspected abuse of:
  - (i) a child [children];
  - (ii) a person 65 years of age or older [the elderly];

and

(iii) a person [people] with a disability [disabilities];

(E) requests for information under the Texas Public Information Act;

(F) maintenance of records; and

(G) access to records that comply with confidentiality provisions in state and federal law.

§356.614. Confidentiality and Victim-Advocate Privileged Information for Adult Residents and Nonresidents.

(a) A center must provide to adult residents and nonresidents, verbally and in writing, [at least] the following information:

(1) that adult residents and nonresidents have the right to access [see] their records and the process by which the adult residents and nonresidents may access their records without incurring a fee;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the resident's or nonresident's [lease files and] records;

(4) an overview of the center's policy and practices on confidentiality;

(5) an overview of the center's policy and practices on victim-advocate privilege;

(6) [(5)] current state and federal laws regarding the limits of confidentiality and victim-advocate privilege under the law, including mandatory reporting for abuse or suspected abuse of:

(A) a child [children];

(B) a person who is 65 years of age or older [the elderly]; and

(C) a person [people] with a disability [disabilities];

(7) [(6)] an overview of the center's policy for responding to court orders;

(8) [(7)] an overview of the center's policy for requests for information under the Texas Public Information Act;

(9) [(8)] an overview of the center's policy for release of information;

(10) [(9)] when the records will be decoded or destroyed; and

(11) [(10)] an overview of what kind of information will remain in the record after [file open] a resident or nonresident terminates services.

(b) If a center is unable to provide the information described in subsection (a) of this section in writing, the center must maintain documentation stating the reason why the information could not be provided in writing.

§356.615. Confidentiality and Victim-Advocate Privilege Agreements.

(a) A center must require that [have] all employees, contract staff, volunteers, board members, [student] interns, and adult residents and adult nonresidents sign a confidentiality and victim-advocate privilege agreement. The confidentiality and victim-advocate privilege agreement must have a provision that states that confidentiality and victim-advocate privilege must be maintained after an employee, contract staff, volunteer, board member, [student] intern, resident, or nonresident leaves the center. The signed confidentiality and victim-advocate privilege agreements must be placed:

(1) in the personnel file [files] of an employee [the employees];

(2) in the corporate record [records] of a [the] board member [members]; and

(3) in the individual file [files] of a contract staff, volunteer, intern, resident, and nonresident [volunteers, student interns, residents, and nonresidents].

(b) A center must have a written policy to ensure resident and nonresident confidentiality and victim-advocate privilege when there is a visitor on the premises in spaces where residents and nonresidents are present.

(c) If a victim is unable to physically sign the confidentiality and victim-advocate privilege agreement required in subsection (a) of this section due to a bona fide emergency:

(1) the victim must verbally agree to adhere to the confidentiality and victim-advocate privilege agreement; and



(2) the center must:

(A) maintain documentation of the verbal agreement;

and

(B) obtain a signed agreement as soon as feasible from the victim.

(d) For the purposes of subsection (c) of this section, a "bona fide emergency" is one in which the victim has limited access to means of communication and may need to terminate communication abruptly in order to avoid detection of the communication by the victim's abuser.

§356.616. *Confidentiality and Victim-Advocate Privilege Training.* A center must provide training annually to employees, board members, contract staff, volunteers, and interns who have access to personally identifying information[, and interns] on:

(1) confidentiality policies and procedures;

(2) victim-advocate privilege policies and procedures;

(3) [(2)] the importance of confidentiality for victims of family violence;

(4) [(3)] how information is recorded; [and]

(5) procedures for responding to court orders and any other requests for confidential or privileged information;

(6) [(4)] state and federal laws regarding confidentiality; and[-]

(7) state laws regarding the victim-advocate privilege under Texas Family Code Chapter 93.

§356.617. *Information in Resident or Nonresident Records [Files].*

A center must limit the information kept, both written and electronically, in a resident's or a nonresident's record [files] to information necessary for:

(1) statistical and funding purposes;

{(2) establishing goals for intervention and advocaey;}

(2) [(3)] documenting the survivor-stated need for and delivery of services; and

(3) [(4)] protecting the liability of the center and its employees, contract staff, volunteers, interns, and board members.

§356.618. *Policies and Procedures Regarding Entries in a Resident or Nonresident Record [File].*

(a) A center must develop, maintain, and comply with written policies and procedures regarding entries into a resident or nonresident record to [file that] require that:

(1) each entry in a resident or nonresident record [must] be attributed to and dated by the employee or volunteer entering the information;

(2) a resident's or nonresident's record does [a resident or nonresident file must] not include the names of other residents or nonresidents; and

(3) if the center provides direct services for both a [the] victim and an abuser, the center maintains a separate record on each, one for the victim and one for the abuser [the violent family member, the center must, at a minimum, maintain separate ease records to promote victim safety and confidentiality].

(b) A center must develop, maintain, and comply with written policies and procedures that [to] ensure residents or nonresidents may [a resident or nonresident has] access and [to] review all information in their record [her or his ease file].

(c) If a resident or nonresident contests an [a ease file] entry in the resident's or nonresident's record [her or his file], the center must either:

(1) remove the entry from the record [file]; or

(2) if the entry is not removed, note in the record [ease file] that the resident or nonresident contested [believes] the entry [to be inaccurate].

(d) A center may create and store entries into a resident or nonresident record [to files] electronically, provided that:

(1) electronic entries are secure and attributed to an individual, which may include password-protected system access; and

(2) records are kept in compliance with applicable state and federal laws, including 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act [(42 U.S.C. Chapter 110)], and §356.504 and §356.619 [§§379.504, 379.619, and 379.625] of this subchapter (relating to Security Policies and Procedures and[-] Maintaining Control Over [over] Resident and Nonresident Records. [Files; and Policies and Procedures for the Retention and Destruction of Documentation].)

§356.619. *Maintaining Control Over [over] Resident and Nonresident Records [Files].*

A center must develop, maintain, and comply with written procedures that:

(1) outline the responsibilities of the custodian of the records, designated by the center's executive director, for maintaining control over the residents' and nonresidents' [resident and nonresident] records, including a [the] court's access to the records;

(2) require residents' and nonresidents' [resident and nonresident] records to be kept secure and not be removed from the center's premises without the written permission of the custodian of the records;

(3) provide for the safekeeping of residents' and nonresidents' [resident and nonresident] records in the event of the center's closure; and

(4) allow residents and nonresidents to access their records in the event of the center's closure without assessing a fee.

§356.620. *Release of Resident or Nonresident Information.*

(a) A [The] center may not release resident or nonresident information, orally or in writing, unless the resident or nonresident completes a properly executed [only if it first obtains a written] release of information form created by the center, for the purpose of consenting to the release of the resident's or nonresident's information [of information from the resident or nonresident].

(b) Regardless of whether a center obtains a properly executed release of information form completed by a resident or nonresident [written release of information from a resident or nonresident is obtained], the center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

(1) a child [children];

(2) a person who is 65 years of age or older [the elderly]; and

(3) a person [people] with a disability [disabilities].

(c) An abuser or suspected abuser of a minor or of an individual with a guardian, as well as the abuser or suspected abuser of a survivor parent of the minor or of the individual's guardian, may not consent to the release of the minor's or individual with a guardian's information.

(d) For the purposes of this section, "minor" means a person under 18 years of age.

*§356.621. Release of Resident or Nonresident Information Form [Document].*

The release of a resident's or nonresident's information form [document] must include the following:

- (1) the name of no more than one person or one organization to which the information is being released;
- (2) the specific information to be released;
- (3) the beginning and ending dates the release is effective, not to exceed the resident's stay or the nonresident's active length of services;
- (4) the date and the signatures of the resident or nonresident and the employee or volunteer releasing the information; and
- (5) a statement of the resident's or nonresident's right to revoke, in writing, a release of information at any time. [This revocation request must be submitted in writing.]

*§356.623. Procedures Regarding Court Orders.*

A center must develop, maintain, and comply with written policies and procedures for responding to court orders, [such as] subpoenas, search warrants, and [or] writs of attachment. The written procedures must include:

- (1) what to do when a process server arrives with a court order or other legal document;
- (2) on whom court orders and other documents may be served, such as the custodian of the records, the executive director, or, in the executive director's absence, the designated staff;
- (3) which attorney or attorneys [attorney(s)] should be contacted;
- (4) the process by which the center will make reasonable attempts to provide notice to victims affected by a potential release of information;
- (5) [(4)] who must [will] discuss the court order or other legal documents [subpoena] and legal options with the resident or nonresident or other victim of family violence, and at what point;
- (6) [(5)] information about compliance with state and federal confidentiality and victim-advocate privilege provisions; [and]
- (7) [(6)] the circumstances under which records may be released; and[-]
- (8) an affirmative statement that the center will take steps necessary to protect the privacy and safety of the persons affected by the release of information under state and federal laws.

*§356.626. Disruption in Providing Services.*

- (a) A center must develop, maintain, and comply with written policies and procedures for any disruption anticipated to last 24-hours or longer that may affect [in] the ability of the center to provide services in-person, by phone, or remotely.
- (b) Any disruption in the ability to provide services must be [verbally] reported immediately to the Texas Health and Human Services Commission (HHSC).
- (c) The report [After the initial verbal notification, the center must submit] to HHSC required by subsection (b) of this section must include a detailed[-]; within two weeks, a written[-] description of the disruption and how services will be or were maintained.

*§356.627. [Maximum] Length of Stay for Shelter Center Residents.*

(a) The Texas Health and Human Services Commission [(HHSC)] does not impose a maximum length of stay for a center resident.

(b) If a center has a maximum length of stay, it must have a written policy explaining its necessity and the length of the maximum stay.

(c) A center is required to offer a minimum stay of no less than 30 days from the date of entry into the shelter for a resident to use, if the resident chooses to do so.

(d) A center's policies under §356.612 of this division (relating to Termination of Services) can be utilized within the 30-day minimum stay, if necessary.

*§356.629. Resident's Belongings.*

(a) A center must develop, maintain, and comply with written policies and procedures regarding the security of a resident's [residents'] belongings.

(b) A resident [Residents] must be informed in writing of:

- (1) how long personal belongings will be stored if the resident leaves a [they leave the] 24-hour-a-day shelter; and
- (2) what will happen to the resident's [their] items if the resident does [they do] not pick the items [them] up by the deadline.

*§356.631. Community Education and Prevention.*

(a) A center must have written policies and procedures about community education that:

- (1) ensure [that] community education is provided to as many diverse groups as possible in each county where services are provided, including underserved communities;
- (2) focus part of the community education on informing victims of family violence of existing family violence services; and
- (3) comply with §356.608 and §356.638 [§379.608] of this division (relating to Access to Services for People with Limited English Proficiency and Access to Services for People with a Disability).

(b) When providing community education, a center may [must]:

- (1) use presentations;
- (2) use online media or virtual forums;
- (3) [(2)] distribute written materials; and
- (4) [(3)] establish and use media contacts.

(c) A center may offer primary and secondary prevention as a component of community education.

*§356.635. Content of Training for Non-Direct Service Volunteers.*

If a [A] center has non-direct service volunteers, the center must provide non-direct service volunteers with:

- (1) a basic orientation of the duties volunteers [they] perform;
- (2) the center's policies and procedures regarding confidentiality and victim-advocate privilege; and
- (3) at a minimum, basic information about the organization's mission, philosophy, and policies.

*§356.636. Access to Services for People with a Disability.*

(a) A center must:

- (1) serve people with a disability and take reasonable steps to ensure meaningful access to the program;

(2) take appropriate steps to ensure that communications with a victim with a disability, a victim's dependents with a disability, and members of the public with a disability are as effective as communications with persons who do not have a disability; and

(3) furnish appropriate auxiliary aids and services when necessary to ensure that eligible individuals with a disability, including a victim, a victim's dependents, and members of the public, have equitable access to services.

(b) The auxiliary aids and services described in subsection (a)(3) of this section may include qualified interpreters and large print materials.

§356.637. Service Model.

A center must:

(1) develop, maintain, and comply with a written advocacy service model that is:

(A) voluntary;

(B) trauma-informed; and

(C) respects an individual's needs;

(2) develop training requirements for all employees, contract staff, interns, and volunteers that provide direct services to survivors regarding the advocacy service model including the importance of and best practices for voluntary and trauma-informed services; and

(3) have written policies and procedures to evaluate the effectiveness of the service model and report the results to the Texas Health and Human Services Commission as requested.

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 December 3, 2024.

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Karen Ray

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Health and Human Services Commission

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**26 TAC §§356.603, 356.622, 356.624, 356.625, 356.630, 356.632, 356.633**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.603. *Eligibility.*

§356.622. *Court Orders.*

§356.624. *Notification of Court Orders.*

§356.625. *Policies and Procedures for the Retention and Destruction of Documentation.*

§356.630. *Cooperation with Criminal Justice Officials.*

§356.632. *Volunteer Program.*

§356.633. *Volunteer Recruitment.*

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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## DIVISION 7. SERVICE DELIVERY

**26 TAC §§356.701 - 356.711, 356.713, 356.714, 356.716, 356.718 - 356.720**

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new sections affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.701. *Shelter Center Services.*

(a) A [The] center must provide, at a minimum, access to the following services, directly, by referral, or through formal arrangements with other agencies, and have written procedures regarding these services as described in this subchapter:

(1) 24-hour-a-day shelter;

(2) a crisis call hotline available 24 hours a day, in compliance with §356.608 and §356.636 of this subchapter (relating to Access

to Services for People with Limited English Proficiency and Access to Services for People with a Disability);

(3) emergency medical care;

(4) crisis and intervention services, including [safety planning,] understanding and support, information, education, referrals, and other resource assistance;[; and individual service plans]

(5) emergency transportation;

(6) advocacy focused on:

(A) economic and housing stability;

(B) physical, behavioral, and mental health;

(C) the needs of children who are victims and the children of victims; and

(D) the civil and criminal legal systems, including identifying individual needs, legal rights and legal options, and providing support and accompaniment in pursuing those options;

(7) ongoing safety planning services in collaboration with the self-stated priorities and needs of the victim of family violence;

(8) community education regarding family violence and family violence prevention efforts;

(9) counseling services; and

(10) peer support services led by victims of family violence, including activities and other efforts that facilitate connections and the creation of community among victims of family violence.

[(6) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights and legal options and providing support and accompaniment in pursuing those options]

[(7) information about educational arrangements for children;]

[(8) information about training for and seeking employment; and]

[(9) a referral system to existing community services.]

(b) All services must be provided under a voluntary and trauma-informed service model as described in §356.637 of this subchapter (relating to the Service Model).

§356.702. *Reporting Data to HHSC [Data Collection].*

(a) A center must regularly report complete and accurate data through the secure file transport protocol designated [data collection system approved] by the Texas Health and Human Services Commission (HHSC)[; using service definitions in the Shelter Center Provider Manual]. Data submission is due by the deadline specified in the HHSC contract related to family violence service delivery. HHSC reserves the right to impose sanctions if a center does not submit complete and accurate data by the deadline specified in the contract [are not submitted on time].

(b) If extenuating circumstances exist, a center must contact HHSC via email before the due date of the data submission to request an extension of said due date.

[(b) In the event that the center may not be able to provide services due to a natural disaster or fire, the affected center will consult with HHSC regarding whether exceptions to data reporting deadlines and data collection service definitions should be made.]

(c) A center must contact HHSC via email within two business days of discovering data errors or inconsistencies that will result in the center's inability to report accurate data in a timely manner.

(d) [(e)] When collecting and reporting data, a [the] center must comply with state and federal confidentiality provisions. Data that a center submits must be in the aggregate and not contain personally identifying information.

(e) Resident and nonresident data collected by a center for HHSC reporting must be provided voluntarily by a resident or nonresident and the resident or nonresident may refuse to offer any element of data at any time.

(f) A center must notify HHSC within 24 hours after discovery of a data breach. Notification must include all information reasonably available to the center about the breach and contact information for the center's point of contact who will communicate with HHSC regarding the breach.

(g) A center must provide written notification to HHSC by the third business day after discovery of a data breach of the following:

(1) all reasonably available information about the data breach, and the center's investigation, to the extent practicable;

(2) the date the data breach occurred;

(3) the date of the center's and, if applicable, subcontractor's discovery of the data breach;

(4) a brief description of the data breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);

(5) a brief description of the center's investigation into the data breach and the status of the investigation;

(6) a description of the types and amount of confidential information involved;

(7) the steps the center has taken to mitigate any harm or potential harm caused by the data breach, including without limitation the provision of sufficient resources to mitigate;

(8) the steps the center has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar data breach;

(9) identify and describe any law enforcement that may be involved in the response to the data breach;

(10) a reasonable schedule for the center to provide regular updates regarding response to the data breach, and

(11) any reasonably available pertinent information, documents, or reports related to the data breach that HHSC requests following the report of the data breach.

§356.703. *Promoting Cooperative Living in the Shelter.*

A center must[:]

[(+) have a written cooperative living agreement that outlines what can be reasonably expected from the staff and residents, including the center's and residents' responsibilities. This agreement must:[; and]

(1) be posted in an area visible to residents;

(2) take into consideration the wellbeing and safety of all residents; and

(3) cannot be used as a means to terminate services, unless it also complies with §356.612 of this subchapter (relating to Termination of Services).

[(2) post this agreement in a visible area.]

§356.704. Crisis Call Hotline.

A center must:

(1) ensure that ~~[answer the hotline 24 hours a day, every day of the year, by]~~ an individual trained in crisis intervention, or who has immediate access to someone who has had ~~[this]~~ training, answers the crisis call hotline 24-hours-a-day, every day of the year;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number across all relevant publications ~~in the center's [in all telephone directories within the center's] service area and on the center's website, if applicable;~~

(4) provide a minimum of two hotline telephone lines;

(5) ensure ~~that~~ the caller has direct access to a live person who is trained to assess the caller's ~~[person's]~~ safety and that a messaging system is not used to answer the hotline;

(6) provide caller identification (ID) ~~[ID]~~ blocks on the center's numbers for outgoing calls ~~[to residents, nonresidents, and other victims of family violence, which may only be unblocked with permission from the resident, nonresident, or victim of family violence];~~

(7) ensure compliance ~~[the screening process complies]~~ with all state and federal laws, including the laws and regulations described in §356.604 of this subchapter (relating to Federal and State Laws Regarding Eligibility), when using ~~[if]~~ the hotline ~~[is used to screen for]~~ eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, as required by §356.636 of this subchapter (relating to Access to Services for People with a Disability) ~~[including victims of family violence with sensory and speech impairments];~~

(10) ensure the center ~~can [is able to]~~ provide meaningful access to people with limited English proficiency as required by §356.608 of this subchapter (relating to Access to Services for People with Limited English Proficiency); and

(11) if the center uses caller ID or any other technology that establishes a record of calls on the hotline~~;~~ ~~the center must~~;

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) comply with the confidentiality requirements as specified in the contract for family violence services with HHSC ~~[of §379.625 of this subchapter (relating to Policies and Procedures for the Retention and Destruction of Documentation)]~~ regarding the records generated by caller ID or other technology.

§356.705. Transferring the Crisis Call Hotline.

(a) A center may transfer its crisis call hotline to another center only if:

(1) ~~there is a telephone or staffing disruption that will last for more than twenty-four hours;~~

(2) ~~the transferring center develops, maintains, and complies with written policies and procedures that address how the center receiving the transferred hotline calls meets the Texas Health and Human Services Commission's (HHSC) training requirements for all direct service staff and ensures immediate access to the receiving center's 24-hour-a-day services; and~~

(3) ~~the transferring center obtains HHSC's approval of the arrangement with the center receiving the transferred calls.~~

~~(b) A center may transfer its crisis call hotline without obtaining HHSC's approval as described in subsection (a) of this section only when the center transfers the hotline to the National Domestic Violence Hotline.~~

~~(c) A center may not transfer its crisis call hotline to law enforcement.~~

§356.706. Medical Care.

A center is not required to provide or pay for emergency medical care, but must:

(1) ~~maintain [Maintain] a current list of [emergency] medical care resources that meet the diverse needs of survivors, including preventative care, and that can provide medical services for victims of family violence and their dependents, including, when available: [; and]~~

~~(A) local affordable options; and~~

~~(B) local physical, behavioral, and mental health resources;~~

(2) ~~develop [Develop], maintain, and comply with written policies and procedures about providing or arranging for emergency transportation to and from emergency medical facilities for shelter residents or victims of family violence and their dependents being considered for acceptance as residents; and [-]~~

(3) ~~maintain and provide standard first aid medical supplies that are accessible to residents 24-hours-a-day.~~

§356.707. Residents' Medications.

A center must develop, maintain, and comply with written policies and procedures regarding all prescribed and non-prescribed medications used by residents, including ~~[but not limited to]:~~

(1) self-administration of drugs and medications;

(2) methods for safekeeping of drugs and medications;

(3) staff's role relating to safekeeping of drugs and medications; and

(4) a system that ensures adult residents have direct ~~and [or]~~ immediate access to their own and their children's medication.

§356.708. Resident's Orientation.

(a) A center must ensure that an orientation is provided to a resident ~~verbally [orally] and in writing, no later than 72 hours from entry into services. The orientation must be documented and comply with the requirements in this chapter as appropriate, and the Family Violence Prevention and Services Act (42 United States Code (U.S.C.) Chapter 110) regulations. The orientation must include [within 24 hours, is documented, and includes but is not limited to]:~~

(1) ~~an explanation of services available;~~

(2) ~~cooperative living agreement;~~

(3) ~~minimum length of stay;~~

(4) ~~the center's termination policy;~~

(5) ~~residents' rights;~~

(6) ~~a nondiscrimination statement, in accordance with the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110);~~

(7) ~~complaint [grievance] procedures;~~

(8) ~~contact information for the Texas Health and Human Services Commission (HHSC), as specified in the center's contract with HHSC;~~

(9) [(8)] safety and security procedures, including medication;

(10) [(9)] information about confidentiality and limits of confidentiality, as well as victim-advocate privilege and limits of victim-advocate privilege as required by §356.614 of this subchapter (Relating to Confidentiality and Victim-Advocate Privileged Information for Adult Residents and Nonresidents);

(11) [(10)] waivers of liability; and

(12) [(11)] a wellness check for all family members that addresses each person's [their] immediate needs.

(b) If a center is unable to provide the resident orientation in writing, the center must maintain documentation of the reason.

§356.709. *Nonresident's Orientation.*

(a) A center must ensure that an orientation is provided to a nonresident verbally and in writing during intake. The orientation must be documented and comply with the requirements of this chapter as appropriate, as well as the Family Violence Prevention and Services Act, at 42 United States Code (U.S.C.) Chapter 110, and the Family Violence Prevention and Services Act regulations, at 45 Code of Federal Regulations (C.F.R.) Part 1370. The orientation must include [orally and in writing; is documented; and includes, but is not limited to]:

(1) an explanation of services available;

(2) the center's termination policy;

(3) nonresidents' rights;

(4) a nondiscrimination statement, in accordance with the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110);

(5) the center's complaint [grievance] procedures;

(6) contact information for the Texas Health and Human Services Commission (HHSC), as specified in the center's contract with HHSC;

(7) [(6)] safety and security procedures;

(8) [(7)] information about confidentiality and limits of confidentiality, as well as victim-advocate privilege and limits of victim-advocate privilege as required by §356.614 of this subchapter (relating to Confidentiality and Victim-Advocate Privileged Information for Adult Residents and Nonresidents);

(9) [(8)] waivers of liability; and

(10) [(9)] a wellness check for all family members that addresses each person's [their] immediate needs.

(b) If a center is unable to provide the person orientation in writing, the center must maintain documentation of the reason.

§356.710. *Needs Assessment.*

(a) A center must document in writing each resident's and nonresident's self-stated needs and requests for available services to address these needs.

(b) A center must attempt to re-evaluate the needs of the resident or nonresident regularly and at re-entry to the center.

(c) A center must not use a resident's or nonresident's needs assessment to require the resident or nonresident to participate in services.

§356.711. *Support Groups[Group Intervention].*

A center must[:]

[(1)] provide at least one weekly voluntary support group for adult residents and adult nonresidents.[: and]

[(2) not mandate adult resident or adult nonresident attendance at weekly support groups.]

§356.713. *Delivery of Children's Direct Services.*

The center must:

(1) have developmentally appropriate services available that are specific to meet the needs of children;

(2) provide transportation or make transportation arrangements for child residents who attend school;

(3) provide or arrange for school supplies and clothing for child residents;

(4) provide at least one weekly voluntary, developmentally appropriate, [a] support group for child residents [at least weekly, when age appropriate];

(5) provide at least one weekly, voluntary, developmentally appropriate [a] recreational or social group for child residents [at least weekly]; and

(6) offer information and referral services for nonresident children if nonresident services are offered to the child's parent.

§356.714. *[Intervention]Services for Children Residing in the Shelter.*

A center must offer developmentally appropriate [provide intervention] services to child residents, including [that are age-appropriate and include]:

[(1) procedures ensuring new child residents and/or parent residents have face-to-face contact with the designated children's staff and that this contact is documented;]

(1) [(2)] strategies to enhance safety, including:

(A) safe use of technology;

(B) safety within the shelter environment; and

(C) safety at school, if applicable;

(2) [(3)] developmentally appropriate and trauma-informed understanding and support, including:

(A) addressing needs identified by the child residents or parent residents [victim]; and

(B) activities and information aimed at building self-esteem, problem solving, and recognizing that the child is not responsible for the violence; and

(3) [(4)] information about:

(A) [possible] support systems;

(B) available resources, including local partnerships within the community, particularly any resources with expertise in underserved populations, when available;

(C) confidentiality and victim-advocate privilege; [and]

(D) dynamics of family violence and trauma; and

(E) healthy relationships.

§356.716. *Child Care Permit.*

A center that provides child care may be subject to Texas Health and Human Services Commission (HHSC) regulation under Texas Human Resources Code Chapter 42, and relevant sections of Chapter 745, Chapter 743, and Chapter 746 of this title (relating to Licensing, Minimum Standards for Shelter Care, and Minimum Standards for Child-Care Centers, respectively), and any other relevant set of minimum standards.

§356.718. *Educational Services for Children of Adult Residents.*

(a) A center must inform an adult resident about educational services for the resident's [her or his] child.

(b) A center must maintain knowledge of educational services available within the local community.

(c) ~~[(b)]~~ At a ~~[the]~~ resident's request, a ~~[the]~~ center must:

(1) help the resident make arrangements for the child's continued education, including transportation;

(2) accompany the resident to school meetings regarding the child's ~~[special]~~ needs; and

(3) act as a liaison to the school regarding provisions in a protective order that may directly affect the child's safety.

(d) ~~[(e)]~~ A center must develop, maintain, and comply with written policies and procedures regarding its educational services for children.

§356.719. *Client Assistance Funds.*

(a) A center must develop, maintain, and comply with written policies and procedures regarding residents' and nonresidents' access to client assistance funds, when funds are available, that are consistent and equitable.

(b) A center must provide direct client assistance funds to residents and nonresidents in compliance with the laws and regulations described in §356.604 of this subchapter (relating to Federal and State Laws Regarding Eligibility).

§356.720. *Counseling Services.*

(a) A center must ensure counseling services are available to residents and nonresidents either by:

(1) employees, contract staff, interns, or volunteers of the center; or

(2) counseling services providers contracted by the family violence center.

(b) If a center is unable to provide counseling services in accordance with subsection (a) of this section, the center may offer a referral to a counseling service that is no cost to the resident or nonresident.

(c) Counseling services may include both traditional and non-traditional modalities of counseling and support to meet the mental health and wellness needs of residents and nonresidents.

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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**26 TAC §§356.705, 356.710, 356.712, 356.716, 356.717, 356.719**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.705. *Subcontracting the Crisis Call Hotline.*

§356.710. *Service Plan.*

§356.712. *Religion and Intervention Services.*

§356.716. *Texas Department of Family and Protective Services' (DFPS) Child Care Permit.*

§356.717. *Legal Assistance Services.*

§356.719. *Training and Employment Services.*

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**SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECT CENTERS [PROJECTS]**

**DIVISION 1. BOARD OF DIRECTORS**

**26 TAC §356.803**

**STATUTORY AUTHORITY**

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendment affects Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.803. Confidentiality.

Each board member of a special nonresidential project center must:

(1) provide written assurance that the member is knowledgeable of and will know and comply with the confidentiality requirements of this chapter and the center's policies [Health and Human Services Commission's rules and the contractor's policies related to confidentiality]; and

(2) if the center [project] provides direct services, provide written assurance to the center [contractor] that the board member will not use the position to obtain or access confidential program participant information when not authorized.

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## DIVISION 2. CONTRACT STANDARDS

### 26 TAC §356.901, §356.902

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.901. Internal Monitoring System.

A center [contractor] must develop, maintain, and comply with a written internal monitoring system to evaluate the following:

- (1) the quality of the special project's services;
- (2) the accuracy of the fiscal and programmatic documentation; and

(3) compliance with the policies and procedures specified in the center's [contractor's] contract with the Texas Health and Human Services Commission.

§356.902. Requesting a [Variance or] Waiver.

[(a)] To request a variance or waiver from a specific requirement in this subchapter, the center [contractor's board] must submit a completed Family Violence Program Waiver Request Form prescribed by the Texas Health and Human Services Commission demonstrating the need for the [variance or] waiver.

[(b)] A contractor's board may submit a request for a variance or waiver up to 90 calendar days after the end of the contract year for which the variance or waiver is requested.]

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## DIVISION 3. FISCAL MANAGEMENT

### 26 TAC §356.1001 - 356.1003

#### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new section affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.1001. Accounting System Requirements.

A center [The contractor] must maintain an accounting system and records that:

(1) follow Generally Accepted Accounting Principles (GAAP);

(2) [(+) record [records] revenue and expenditures [using generally accepted accounting principles];

(3) [(2)] establish [includes] a chart of accounts that lists all accounts by an assigned number;



(4) [~~3~~] contain [~~contains~~] a general ledger and subsidiary ledgers;

(5) [~~4~~] maintain accounting [~~maintains supporting~~] documentation for all revenue and expenditures, including[, ~~but not limited to~~]:

(A) receipts or vouchers for revenue;  
(B) bank statements reconciled to the general ledger bank accounts;

(C) journal entry justification;

(D) [~~C~~] canceled checks;

(E) [~~D~~] deposit slips;

(F) [~~E~~] approved invoices;

(G) [~~F~~] receipts;

(H) [~~G~~] leases;

(I) [~~H~~] contracts;

(J) [~~I~~] time and activity sheets;

(K) [~~J~~] inventory; and

(L) [~~K~~] cost allocation and indirect cost worksheets;

(6) [~~5~~] identify [~~identifies~~] all funding sources and expenditures by separate fund type; and

(7) [~~6~~] use [~~uses~~] a double-entry accounting system, either cash, accrual, or modified accrual.

§356.1002. Cash or Non-Cash [Cash/Non-cash] Resources Documentation.

A center [~~contractor~~] must develop, maintain, and comply with written internal policies and procedures to accurately document the non-Texas Health and Human Services Commission (HHSC) cash or non-cash [cash/non-cash] resources required by HHSC under Texas Human Resources Code §51.003 [funding sources].

§356.1003. Fraud, Waste, and Abuse.

(a) A center must immediately report to the Texas Health and Human Services Commission (HHSC) Family Violence Program and HHSC Office of Inspector General any suspected or confirmed fraud, waste, or abuse of funds paid from the HHSC contract related to family violence service delivery, whether or not such suspected or confirmed fraud, waste, or abuse was committed by the center's employees or the center's subcontractors.

(b) In addition to reporting to HHSC, the center must also report the fraud, waste, or abuse to the Office of Attorney General or the State Auditor's Office.

(c) The center must fully cooperate with HHSC, the Office of Attorney General, the State Auditor's Office, or any other state or federal regulatory agency involved in the investigation of the allegation of fraud, waste, or abuse.

(d) A center must not unlawfully disclose any personally identifying information of a victim in the course of reporting fraud, waste, or abuse.

(e) The center must comply with 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act, and Texas Family Code Chapter 93 during the investigation.

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## DIVISION 4. PERSONNEL

### 26 TAC §§356.1101 - 356.1103, 356.1105

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.1101. Personnel Policies.

A center [~~contractor~~] must develop, maintain, and comply with written personnel policies, approved by the board [~~Board~~] of directors [~~Directors~~], and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook. Employees [and] must be notified of new or changed personnel policies in accordance with center policies in a timely manner. The handbook must address [~~at a minimum~~] the following:

(1) contract [~~Contract~~] labor;

(2) conflicts [~~Conflict~~] of interest;

(3) family [~~Domestic~~] violence in the workplace to include support for any staff experiencing family violence and violence occurring at the workplace;

(4) nepotism [~~Nepotism~~];

(5) a hiring [~~Hiring~~] process that is uniform for all candidates for a particular position and includes:

(A) job [~~Job~~] posting;

(B) job [~~Job~~] descriptions with essential job functions;

(C) interviewing procedures [~~Interviewing systems~~];

and

(D) checking references [~~Reference checking~~] and responding to reference checks [~~checking~~];

(6) rules [~~Rules~~] of conduct;

- (7) hours [~~Hours~~] and days of operation;
- (8) employee [~~Employee~~] benefits, including the accrual and use of paid time off [~~leave~~];
- (9) an employee's [~~Employees'~~] right to access the employee's [~~their~~] personnel file [~~files~~];
- (10) written [~~Written~~] and oral employee orientation, initial training, and employee development;
- (11) confidentiality [~~Confidentiality~~] requirements of employee personnel files [~~records~~];
- (12) employee evaluations [~~Employee evaluation~~];
- (13) involuntary [~~Involuntary~~] and voluntary termination; and
- (14) a complaint process for [~~Grievances originating from~~] current and former employees, including the center's process for responding to a complaint.

§356.1102. *Personnel Files.*

A center [~~contractor~~] must maintain a personnel file for each employee. Each file must include [~~at least~~] the following information:

- (1) employment [~~Employment~~] application or resume;
- (2) current job [~~Job~~] descriptions;
- (3) signed [~~Signed~~] acknowledgement of confidentiality agreement to be updated annually;
- (4) signed [~~Signed~~] acknowledgment of receipt of the center's current personnel [~~policies and procedures~~] handbook as described in §356.1101 of this division (relating to Personnel Policies);
- (5) performance [~~Performance~~] evaluations for every year of employment in accordance with the center's personnel policies;
- (6) documentation [~~Documentation~~] of orientation, initial training, and employee development;
- (7) any [~~Any~~] status or classification change;
- (8) all [~~All~~] disciplinary actions and related documentation, if any; and
- (9) letters [~~Letters~~] of praise or criticism, if any.

§356.1103. *Drug and Alcohol Policy.*

If under the jurisdiction of the Drug-Free Workplace Act, a center [~~contractor~~] must develop, maintain, and comply with a written drug and alcohol policy that includes the following:

- (1) prohibition of [~~illegal~~] use or [~~illegal~~] possession of alcohol, illegal drugs, or drugs for which the employee does not have a prescription, if a prescription is required to possess the drug, while on duty;
- (2) a statement of practice rooted [~~belief~~] in a treatment and recovery approach;
- (3) a stated concern for employees and their recovery efforts;
- (4) information on available programs and systems for assistance; and
- (5) a statement of confidentiality.

§356.1105. *Ongoing Employee Training [Staff Development].*

(a) Every year, each employee must receive oral or written information regarding:

(1) confidentiality requirements, including the center's policies for complying with requirements;

(2) federal, state, and program requirements as applicable to an employee's job description, including the requirements outlined in:

(A) this subchapter;

(B) 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act; and

(C) the Texas Health and Human Services Commission contract related to family violence service delivery; and

(3) information on the intersection of family violence and barriers to underserved populations, as well as a description of the organization's client and community demographics.

{(a) Direct service employees and their direct supervisors must receive relevant training or staff development on topics related to their job descriptions as family violence center employees.}

(b) Direct service employees and their supervisors must also receive yearly training on the following:

(1) best practices in family violence service delivery, including:

(A) trauma-informed and survivor-centered advocacy and voluntary services;

(B) access to services for underserved populations, including populations with disabilities;

(C) the intersection of family violence and mental health;

(D) the intersection of family violence and substance use;

(E) technology and data safety; and

(F) language and interpretation accessibility; and

(2) relevant training or staff development on topics related to their job descriptions as family violence center employees.

(c) [(b)] Direct service supervisors must [should] receive training that is relevant to the job descriptions of the people they supervise.

(d) Employees with access to personally identifying information must receive annual training in compliance with §356.1313 of this subchapter (relating to Confidentiality Training).

(e) [(e)] The training described in this section [Training] may be provided virtually or in person [electronically].

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## DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

### 26 TAC §356.1201, §356.1202

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.1201. Facility Requirements for the Special Nonresidential Project.*

A center's [The contractor's] facilities must have:

- (1) [have] access to a private meeting area and [includes] adequate safe space for children;
- (2) a stocked first-aid kit in each facility in central locations and communal spaces, as specified by center policy, that is accessible to all employees, [and] volunteers, and program participants;
- (3) secure, clearly marked locations to store cleansers, solvents, and other hazardous items out of reach from children;
- (4) access to bathroom facilities, including toilets and lavatories;
- (5) [(3)] clearly marked exits; [and]
- (6) smoke detectors, fire extinguishers, current fire inspections, and fire evacuation plans; and
- (7) [(4)] basic furnishings that are clean and in good repair.

*§356.1202. Security System Policies and Procedures.*

(a) A center [contractor] must develop, maintain, and comply with written policies and procedures to promote the safety and security of program participants, employees, and volunteers as appropriate for the project. The written policies and procedures must address technology safety and data security.

(b) If the special nonresidential project center provides direct services, the center [contractor] must have a security system that is operational 24-hours-a-day [24 hours a day]. The security system must [may] include[, but is not limited to] an alarm system, outside [special] lighting, and secure locks [dead bolts, and agreements with local law enforcement].

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## DIVISION 6. PROGRAM ADMINISTRATION

### 26 TAC §§356.1301 - 356.1304, 356.1306, 356.1308 - 356.1313, 356.1315 - 356.1319, 356.1321, 356.1324, 356.1325

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new sections affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.1301. Required Services.*

At a minimum, a center [the contractor] must provide equal access to the services for victims of family violence that are outlined in 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act, and Texas [the] Human Resources Code[,] Chapter 51.

*§356.1302. Charging for Services.*

A center may not [contractor cannot] charge or solicit contributions or donations in return for Texas Health and Human Services Commission-contracted services.

*§356.1303. Eligibility.*

(a) The following individuals are eligible for services under this chapter:

- (1) victims of family violence and dating violence; and
- (2) victims of sexual assault and human trafficking when the sexual assault or human trafficking meets the definition of family violence or dating violence.

(b) All victims described in this section are eligible for services regardless of the victim's current geographic location.

(c) A center must not require a victim to participate in center activities as a condition of receiving services.

*§356.1304. Federal and State Laws Regarding Eligibility.*

When determining eligibility for services for a special nonresidential project, a center [the contractor] must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

~~[(1) Human Resources Code, Chapter 51;]~~

~~(1) [(2)] 42 United States Code (U.S.C.) §2000d, et seq., Title VI of the Civil Rights Act of 1964 [(Public Law 88-352)];~~

~~(2) [(3)] 29 U.S.C. §701, et seq., Section 504 of the Rehabilitation Act of 1973 [(Public Law 93-112)];~~

~~(3) [(4)] 42 U.S.C. §12101, et seq., Americans with Disabilities Act of 1990 [(Public Law 101-336)];~~

~~(4) [(5)] 42 U.S.C. §§6101 - 6107, Age Discrimination Act of 1975 [(42 U.S.C. §§6101-6107)];~~

~~(5) 42 U.S.C. Chapter 110, the Family Violence Prevention and Services Act;~~

~~(6) Texas Human Resources Code Chapter 51;~~

~~(7) Texas Health and Safety Code §85.113, relating to Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and~~

~~(8) [(6)] Texas Health and Human Services Commission regulations regarding civil rights.[]]~~

~~[(7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS; and]~~

~~[(8) the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110).]~~

~~§356.1306. Denial of Services.~~

~~A center may not [contractor can] deny services to an otherwise eligible victim as described in §356.1303 of this division (relating to Eligibility) unless the center adopts [of family violence only if it has] written policies in accordance with this section that outline specific reasons or behaviors that would make a victim ineligible for such services. Under this section, these [These] policies must:~~

~~(1) address only behaviors that threaten the safety and security of staff and program participants;~~

~~(2) apply equally to all people;~~

~~(3) comply with the laws and regulations described in §356.1304 of this division (relating to Federal and State Laws Regarding Eligibility); and~~

~~(4) contain procedures that take into consideration the safety of a victim and require appropriate referrals to other service providers.~~

~~§356.1308. Nonresidential Services for a Minor [Person Under 18 Years of Age].~~

~~(a) For the purposes of this section, "minor" means a person under 18 years of age who:~~

~~(1) is not and has not been married; or~~

~~(2) has not had the disabilities of minority removed for general purposes.~~

~~(b) [(a)] A center [contractor] may provide a nonresidential service to a minor if:~~

~~(1) the minor consents to counseling from a licensed or certified physician, psychologist, counselor, or social worker, under Texas Family Code §32.004, for:~~

~~(A) suicide prevention;~~

~~(B) chemical addiction or dependency; or~~

~~(C) sexual, physical, or emotional abuse;~~

~~(2) the center obtains [contractor has] consent from the minor's parent, managing conservator, or guardian to provide the minor with the nonresidential service; or~~

~~(3) the center [contractor] otherwise complies with Texas Family Code[,] Chapter 32, even if the center [project] does not obtain consent from the minor's parent, managing conservator, or guardian.~~

~~(c) [(b)] Notwithstanding subsection (b) [(a)] of this section, a victim who is [of family violence] under 18 years of age may consent to a nonresidential service provided by the center [contractor] if:~~

~~(1) the victim is married or has been married; or~~

~~(2) the victim has had the disabilities of minority removed for general purposes [(i.e., is legally emancipated)].~~

~~§356.1309. Termination of Services.~~

~~(a) A center [contractor] must develop, maintain, and comply with written policies and procedures that:~~

~~(1) outline behaviors that threaten the safety and security of staff and other program participants for which the center may terminate services [can be terminated];~~

~~(2) do not allow for termination of a program participant's services for any reason other than behaviors that threaten the safety and security of staff and other program participants;~~

~~(3) allow considerations for program participants to have contact with an abusive partner without grounds for termination;~~

~~(4) [(2)] address how current and former program participants can appeal terminations and file complaints [grievances] with the center [contractor];~~

~~(5) [(3)] apply equally to all people; [and]~~

~~(6) [(4)] comply with:~~

~~(A) the laws and regulations described in §356.604 of this division (relating to Federal and State Laws Regarding Eligibility); and~~

~~(B) other applicable laws and regulations; and~~

~~(7) allow a resident or nonresident to voluntarily terminate their services at any time [the Americans with Disabilities Act, Title VI of the Civil Rights Act, §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable laws and regulations].~~

~~(b) Before the termination of [When terminating] services to a program participant, regardless of [participants,] whether the program participant's termination is voluntary [voluntarily] or involuntary [involuntarily], the center [contractor] must make reasonable efforts to:~~

~~(1) assist the program participant [participants] in re-evaluating the participant's [their] safety plan [plans];~~

~~(2) assist in obtaining alternate resources for the program participant [participants] whose services are terminated;~~

~~(3) provide written notice to the program participant of the termination;~~

~~(4) provide written notice to the program participant of the right to file a complaint [grievance] with the center [contractor] and an [the] explanation of the center's complaint [contractor's grievance] procedure; and~~

~~(5) upon request of the program participant, provide contact information for the Texas Health and Human Services Commission's Family Violence Program for complaint purposes.~~

~~§356.1310. General Confidentiality Policy.~~

A center [~~contractor~~] must have a written general confidentiality policy that:

(1) demonstrates that services will be delivered in a manner that ensures program participant confidentiality regarding records and information if the special nonresidential project provides direct services;

(2) includes a statement about the importance of confidentiality in maintaining the safety of:

- (A) victims;
- (B) victims' families;
- (C) volunteers;
- (D) employees; and
- (E) others related to the program;

(3) indicates the parameters of what must be held confidential and by whom, including internal communications to staff regarding program participants [~~clients~~]; [~~and~~]

(4) indicates the limits of confidentiality under the law; [.]

(5) designates the custodian of the records, including digital records; and

(6) includes procedures for:

(A) retention and destruction of records, including digital records;

(B) responses to court orders;

(C) release of information;

(D) reports of abuse or suspected abuse of:

(i) a child;

(ii) a person 65 years of age or older; and

(iii) a person with a disability;

(E) requests for information under the Texas Public Information Act;

(F) maintenance of records; and

(G) access to records that comply with confidentiality provisions in state and federal law.

#### §356.1311. *Confidentiality Information for Program Participants.*

(a) If direct services are provided to adult program participants, the center [~~contractor~~] must provide the program participants, verbally and in writing, at least the following:

(1) that program participants have the right to access their records and the process by which program participants may access their records without incurring a fee [~~the right to see their records~~];

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the organization has access to the program participants' case files and records;

(4) an overview of the center's [~~contractor's~~] policy and practices on confidentiality;

(5) current state and federal laws regarding the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

- (A) a child [~~children~~];

(B) a person 65 years of age and older [~~the elderly~~]; and

(C) a person [~~people~~] with a disability [~~disabilities~~];

(6) an overview of the center's [~~contractor's~~] policy for responding to court orders;

(7) an overview of the center's [~~contractor's~~] policy for requests for information under the Texas Public Information Act;

(8) an overview of the center's [~~contractor's~~] policy for release of information;

(9) when the records will be decoded or destroyed; and

(10) an overview of what information will remain in the record after [~~file onee~~] a program participant terminates services.

(b) If a center is unable to provide the information described in subsection (a) of this section in writing, the center must maintain documentation stating the reason why the information could not be provided in writing.

#### §356.1312. *Confidentiality Agreements.*

(a) A center [~~contractor~~] must require that [~~have~~] all employees, contract staff, volunteers, board members, [~~student~~] interns, and adult program participants sign a confidentiality agreement. The confidentiality agreement must have a provision that states that confidentiality must be maintained after an employee, contract staff, volunteer, board member, [~~student~~] intern, or program participant leaves the project. The signed confidentiality agreements must be placed:

(1) in the personnel file [~~files~~] of an employee [~~the employees~~];

(2) in the corporate record [~~records~~] of a [~~the~~] board member [~~members~~]; and

(3) in the individual files of contract staff, volunteers, interns, and program participants [~~volunteers, student interns, and program participants~~].

(b) A center must have a written policy to ensure program participant confidentiality when there is a visitor on the premises in spaces where program participants are present.

(c) If a confidentiality agreement required in subsection (a) of this section cannot be physically signed:

(1) the agreeing party must provide verbal agreement to adhere to the confidentiality agreement; and

(2) the center must:

(A) maintain documentation of the verbal agreement; and

(B) obtain a signed agreement as soon as feasible for the agreeing party.

#### §356.1313. *Confidentiality Training.*

A center [~~contractor~~] must provide training annually to employees, board members, contract staff, volunteers, and interns who have access to personally identifying information, [~~and interns~~] on:

(1) confidentiality policies and procedures;

(2) the importance of confidentiality for victims of family violence;

(3) how information is recorded; [~~and~~]

(4) procedures for responding to court orders and any other requests for confidential information; and

(5) ~~[(4)]~~ state and federal laws regarding confidentiality.

§356.1315. Information in Program Participant Records [Files].

If a special nonresidential center ~~[project]~~ provides direct services, the center ~~[a contractor]~~ must limit the information kept, both written and electronically, in a program participant's record ~~[files]~~ to information necessary for:

(1) statistical and funding purposes;

~~[(2) establishing goals for intervention and advocacy;]~~

(2) ~~[(3)]~~ documenting the survivor-stated need for and delivery of services; and

(3) ~~[(4)]~~ protecting the liability of the center and the center's ~~[contractor and its]~~ employees, contract staff, volunteers, interns, and board members.

§356.1316. Policies and Procedures Regarding Entries in a Program Participant's Record [File].

(a) If a special nonresidential center ~~[project]~~ involves direct services, the center ~~[a contractor]~~ must develop, maintain, and comply with written policies and procedures regarding entries into a program participant's record ~~[file]~~ that require that:

(1) each entry ~~[must]~~ be attributed to and dated by the employee or volunteer entering the information;

(2) the ~~[a]~~ program participant record does ~~[file must]~~ not include the names of other program participants; and

(3) if the center ~~[contractor]~~ provides direct services for both a ~~[the]~~ victim and an abuser, the center maintains a separate record for each, one for the victim and one for the abuser ~~[the violent family member, the contractor must, at a minimum, maintain separate case records to promote victim safety and confidentiality].~~

(b) A center ~~[contractor]~~ must develop, maintain, and comply with written policies and procedures to ensure a program participant may have ~~[has]~~ access and ~~[to]~~ review all information in the program participant's record ~~[her or his case file].~~

(c) If a program participant contests an ~~[a case file]~~ entry in the program participant's record ~~[her or his file]~~, the center ~~[contractor]~~ must either:

(1) remove the entry from the record ~~[file]~~; or

(2) if the entry is not removed, note in the record ~~[case file]~~ that the program participant has contested ~~[believes]~~ the entry ~~[to be inaccurate].~~

(d) A center ~~[contractor]~~ may create and store entries to a program participant's record ~~[files]~~ electronically, provided that:

(1) electronic entries are secure and attributed to an individual, which may include password-protected system access; and

(2) records are kept in compliance with applicable state and federal laws, including 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act ~~[(42 U.S.C. Chapter 110), and §§356.1202, 356.1317, and 356.1323 [§§379.1202, 379.1317, and 379.1323]]~~ of this subchapter (relating to Security System Policies and Procedures; Maintaining Control Over ~~[over]~~ Program Participant Records ~~[Files]~~; and Policies and Procedures for the Retention and Destruction of Documentation).

§356.1317. Maintaining Control Over ~~[over]~~ Program Participant Records [Files].

A center ~~[contractor]~~ must develop, maintain, and comply with written procedures that:

(1) outline the responsibilities of the custodian of the records, designated by the center's ~~[contractor's]~~ executive director, for maintaining control over ~~[the]~~ program participants' ~~[participant]~~ records, including a ~~[the]~~ court's access to the records;

(2) require program participants' ~~[participant]~~ records are ~~[to be]~~ kept secure and not ~~[be]~~ removed from the center's premises without the written permission of the custodian of the records;

(3) provide for the safekeeping of program participants' ~~[participant]~~ records in the event of the center's ~~[contractor's]~~ closure; and

(4) allow a program participant to access the program participant's record ~~[her or his records]~~ in the event of the center's ~~[contractor's]~~ closure without assessing a fee.

§356.1318. Release of Program Participant Information.

(a) A center may not release program participant information, orally or in writing, unless the program participant completes a properly executed release of information form created by the center, for the purpose of consenting to the release of the program participant's information.

(b) This rule does not apply when responding to subpoenas, court orders, or other requests for information with which a center is legally required to comply. However, this subsection does not prohibit a center from asserting any relevant objections, claims of privilege, or other legally permissible responses prior to releasing such information.

~~[(a) A contractor may release information, orally or in writing, only if the contractor first obtains a written release of information from the program participant].~~

(c) ~~[(b)]~~ Regardless of whether a center obtains a properly executed ~~[written]~~ release of information form completed by ~~[from]~~ a program participant, the center ~~[is obtained, the contractor]~~ must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

(1) a child ~~[children]~~;

(2) a person who is 65 years of age or older ~~[the elderly]~~; and

(3) a person ~~[people]~~ with a disability ~~[disabilities]~~.

(d) An abuser or suspected abuser of a minor or of an individual with a guardian, as well as the abuser or suspected abuser of a survivor parent of the minor or of a guardian of an individual, may not consent to the release of the information of the minor or the individual with a guardian.

(e) For the purposes of this section, "minor" means a person under 18 years of age.

§356.1319. Release of Program Participant Information Form [Document].

The release of a program participant's information form ~~[document]~~ must include the following:

(1) the name of no more than one person or one organization to which the information is being released;

(2) specific information to be released;

(3) the beginning and ending dates the release is effective, not to exceed the program participant's active length of services;

(4) the date and the signatures of the program participant and the employee or volunteer releasing the information; and

(5) a statement of the program participant's right to revoke, in writing, a release of information at any time. [This revocation request must be submitted in writing.]

*§356.1321. Procedures Regarding Court Orders.*

A center ~~[contractor]~~ must develop, maintain, and comply with written policies and procedures for responding to court orders, ~~[such as]~~ subpoenas, search warrants, and ~~[or]~~ writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order or other legal document;

(2) on whom court orders and other documents may be served, such as the custodian of the records or the executive director, or, in the executive director's absence, the designated staff;

(3) which attorney or attorneys [attorney(s)] should be contacted;

(4) the process by which the center will make reasonable attempts to provide notice to victims affected by a potential release of information;

(5) ~~[(4)]~~ who must [with] discuss the court order or other legal documents [subpoena] and legal options with the program participant or other victim of family violence, and at what point;

(6) ~~[(5)]~~ information about compliance with state and federal confidentiality and victim-advocate privilege provisions; [and]

(7) ~~[(6)]~~ the circumstances under which records may be released; and[.]

(8) an affirmative statement that the center will take steps necessary to protect the privacy and safety of the persons affected by the release of information under state and federal laws.

*§356.1324. Access to Services for People with a Disability.*

(a) A center must:

(1) serve people with a disability and take reasonable steps to ensure meaningful access to the program;

(2) take appropriate steps to ensure that communications with a victim with a disability, a victim's dependents with a disability, and members of the public with a disability are as effective as communications with persons who do not have a disability; and

(3) furnish appropriate auxiliary aids and services where necessary to ensure that eligible individuals with a disability, including a victim, a victim's dependents, and members of the public, have equitable access to services.

(b) The auxiliary aids and services described in subsection (a)(3) of this section may include qualified interpreters and large print materials.

*§356.1325. Service Model.*

If providing direct services, a center must:

(1) develop, maintain, and comply with a written advocacy service model that is:

(A) voluntary;

(B) trauma-informed; and

(C) respects an individual's needs;

(2) develop training requirements for all employees, contract staff, interns, and volunteers that provide direct services to survivors regarding the advocacy service model including the importance of and best practices for voluntary and trauma-informed services; and

(3) have written policies and procedures to evaluate the effectiveness of the service model and report the results to the Texas Health and Human Services Commission as requested.

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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**26 TAC §§356.1303, 356.1314, 356.1320, 356.1322**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.1303. Eligibility.*

*§356.1314. Provision of Health and Human Services Commission (HHSC)-funded Services by Attorneys or Other Licensed Professionals.*

*§356.1320. Court Orders.*

*§356.1322. Notification of Court Orders.*

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**DIVISION 7. SERVICE DELIVERY**

**26 TAC §§356.1401, 356.1404, 356.1406, 356.1408**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.1401. Special Nonresidential Project Services.*

*§356.1404. Subcontracting the Crisis Call Hotline.*

*§356.1406. Religion and Intervention Services.*

*§356.1408. Texas Department of Family and Protective Services' (DFPS) Child Care Licensing Permit.*

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**26 TAC §§356.1401 - 356.1405, 356.1408, 356.1409**

**STATUTORY AUTHORITY**

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new sections affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.1401. Special Nonresidential Project Services.*

As a part of the special nonresidential project, a center must:

(1) provide:

(A) community education or prevention relating to family violence; or

(B) direct delivery of services for adult victims of family violence or the victims' children;

(2) maintain a system of referring victims of family violence to needed resources available in the community, including a family violence shelter center and other housing resources;

(3) demonstrate the project is addressing a need of an underserved or special population as identified by the Texas Health and Human Services Commission; and

(4) demonstrate a process for obtaining voluntary feedback from the underserved or special population served.

*§356.1402. Reporting Data to HHSC [Data Collection].*

(a) A center [~~contractor~~] must regularly report complete and accurate data through the secure file protocol designated [data collection system approved] by the Texas Health and Human Services Commission (HHSC) [~~using service definitions in the Special Nonresidential Project Provider Manual~~]. Data submission is due by the deadline specified in the HHSC contract related to family violence service delivery. HHSC reserves the right to impose sanctions if a center does not submit complete and accurate data by the deadline specified in the contract [~~are not submitted on time~~].

(b) If extenuating circumstances exist, a center must contact HHSC via email before the due date of the data submission to request an extension of said due date.

~~[(b) In the event that the contractor may not be able to provide services due to a natural disaster or fire, the affected contractor will consult with HHSC regarding whether exceptions to data reporting deadlines and data collection service definitions should be made.]~~

(c) A center must contact HHSC via email within two business days of discovering data errors or inconsistencies that will result in the center's inability to report accurate data in a timely manner.

(d) ~~[(e)]~~ When collecting and reporting data, a center [~~the contractor~~] must comply with state and federal confidentiality provisions. Data that a center submits must be in the aggregate and not contain personally identifying information.

(e) Program participant data collected by a center for HHSC reporting must be provided voluntarily by a program participant, and the program participant may refuse to offer any element of data at any time.

(f) A center must notify HHSC within 24 hours after discovery of a data breach. Notification must include all information reasonably available to the center about the breach and contact information for the center's point of contact who will communicate with HHSC regarding the breach.

(g) A center must provide written notification to HHSC by the third business day after discovery of a data breach of the following:

(1) all reasonably available information about the data breach, and the center's investigation, to the extent practicable;

(2) the date the data breach occurred;

(3) the date of the center's and, if applicable, subcontractor's discovery of the data breach;



(4) a brief description of the data breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);

(5) a brief description of the center's investigation into the data breach and the status of the investigation;

(6) a description of the types and amount of confidential information involved;

(7) the steps the center has taken to mitigate any harm or potential harm caused by the data breach, including without limitation the provision of sufficient resources to mitigate;

(8) the steps the center has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar data breach;

(9) identify and describe any law enforcement that may be involved in the response to the data breach;

(10) a reasonable schedule for the center to provide regular updates regarding response to the data breach, and

(11) any reasonably available, pertinent information, documents, or reports related to the data breach that HHSC requests following the report of the data breach.

#### §356.1403. Crisis Call Hotline.

A center ~~[contractor]~~ does not have to provide a crisis call hotline, but if the center ~~[contractor]~~ does provide a hotline and it is funded by the Texas Health and Human Services Commission, ~~[(HHSC),]~~ the center ~~[contractor]~~ must:

(1) ensure that [ answer the hotline 24 hours a day, every day of the year, by] an individual trained in crisis intervention, or who has immediate access to someone who has had [this] training, answers the crisis call hotline 24-hours-a-day, every day of the year;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number across all relevant publications in the center's [in all telephone directories within the contractor's] service area and on the center's [contractor's] website, if applicable;

(4) provide a minimum of two hotline telephone lines;

(5) ensure that the caller has direct access to a live person who is trained to assess the caller's [person's] safety and that a messaging system is not used to answer the hotline;

(6) provide caller identification (ID) [ID] blocks on the center's [contractor's] numbers for outgoing calls to program participants [and other victims of family violence, which may only be unblocked with permission from the program participant or victim of family violence];

(7) ensure compliance [the screening process complies] with all state and federal laws, including §356.1304 of this subchapter (relating to Federal and State Laws Regarding Eligibility), when using [if] the hotline to determine [is used to screen for] eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, as required by §356.1324 of this subchapter (relating to Access to Services for People with a Disability) [including victims of family violence with sensory and speech impairments];

(10) ensure the center can [contractor is able to] provide meaningful access to people with limited English proficiency as required by §356.1307 of this subchapter (relating to Access to Services for People with Limited English Proficiency); and

(11) if the center ~~[contractor]~~ uses caller ID or any other technology that establishes a record of calls on the hotline, the center ~~[contractor]~~ must:

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) comply with the confidentiality requirements of §356.1323 [§379-1323] of this subchapter (relating to Policies and Procedures for the Retention and Destruction of Documentation) regarding the records generated by caller ID or other technology.

#### §356.1404. Transferring the Crisis Call Hotline.

(a) A center may transfer its crisis call hotline to another center only if:

(1) there is a telephone or staffing disruption that will last for more than twenty-four hours;

(2) the transferring center develops, maintains, and complies with written policies and procedures that address how the center receiving the transferred hotline calls meets the Texas Health and Human Services Commission's (HHSC) training requirements for all direct service staff and ensures immediate access to the accepting center's 24-hours-a-day services; and

(3) the transferring center obtains HHSC's approval of the arrangement with the center accepting the transferred calls.

(b) A center may transfer its crisis call hotline without obtaining HHSC's approval as described in subsection (a) of this section only when the center transfers the hotline to the National Domestic Violence Hotline.

(c) A center may not transfer its crisis call hotline to law enforcement.

#### §356.1405. Program Participant's Orientation.

(a) If a center ~~[contractor]~~ provides direct services, the center ~~[contractor]~~ must ensure that an orientation is provided to a program participant verbally ~~[orally]~~ and in writing. The orientation must be documented and comply with the requirements in this chapter as appropriate, and the Family Violence Prevention and Services Act (42 United States Code (U.S.C.) Chapter 110) regulations. The orientation must include [; is documented, and includes, but is not limited to]:

(1) an explanation of services available;

(2) the center's termination policy;

(3) program participants' rights;

(4) a nondiscrimination statement, in accordance with the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110);

(5) complaint ~~[grievance]~~ procedures;

(6) contact information for the Texas Health and Human Services Commission (HHSC), as specified in the center's contract with HHSC;

(7) ~~[(6)]~~ safety and security procedures;

(8) ~~[(7)]~~ information about confidentiality and victim-advocate privilege and the limits of confidentiality and victim-advocate privilege;

(9) ~~[(8)]~~ waivers of liability; and

(10) ~~[(9)]~~ a wellness check for the program participant that addresses each participant's immediate needs.

(b) If a center is unable to provide the resident orientation in writing, the center must maintain documentation of the reason.

§356.1408. *Child Care Permit.*

A center that provides child care at the center may be subject to Texas Health and Human Services Commission regulation under Texas Human Resources Code Chapter 42, relevant sections of Chapter 745, Chapter 743, and Chapter 746 of this title (relating to Licensing, Minimum Standards for Shelter Care, and Minimum Standards for Child-Care Centers, respectively), and any other relevant set of minimum standards.

§356.1409. *Client Assistance Funds.*

(a) A center must develop, maintain, and comply with written policies and procedures regarding residents' and nonresidents' access to assistance funds, when funds are available, that are consistent and equitable.

(b) A center must provide direct client assistance funds in compliance with the laws and regulations described in §356.1304 of this subchapter (relating to Federal and State Laws Regarding Eligibility).

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SUBCHAPTER D. NONRESIDENTIAL CENTERS

DIVISION 1. BOARD OF DIRECTORS

26 TAC §§356.1501 - 356.1504

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.1501. *[Fiscal] Oversight and Accountability.*

The board of directors of a nonresidential center must:

- (1) ensure that the center is operating in a manner that keeps the organization's mission and purpose focused, without becoming involved in day-to-day operations;
  - (2) hire the center's executive director, and explain the following:
    - (A) the role of the board in supervising and evaluating the executive director;
    - (B) the structures in place for evaluation; and
    - (C) an overview of the board's and executive director's duties;
  - (3) review regularly, as-a-whole [as a whole], or as delegated to the center's finance committee, [regularly review] actual revenue and expenditures and compare them to budgeted revenue and estimated costs;
  - (4) review and approve programs and budgets in accordance with the bylaws;
  - (5) maintain and comply with current organizational by-laws; [and]
  - (6) review and approve board policies for the organization's operation in accordance with the bylaws;[-]
  - (7) ensure that all board members are knowledgeable of all grant expectations as they pertain to board members and their responsibilities under the Texas Health and Human Services Commission Family Violence Program shelter grant;
  - (8) review and comply with the center's complaint policy and address any complaints escalated to the board; and
  - (9) as-a-whole, or as delegated to board committee, review and approve program policy changes.
- §356.1502. *Nonresidential Center's Board Handbook.*
- (a) The board members must be given a handbook within 60 days of starting their first term that contains[, at a minimum,] the following:
    - (1) the board member's [member] job description;
    - (2) the current list of board members with current contact information;
    - (3) the organization's mission statement;
    - (4) the organization's bylaws and a copy of the letter granting 501(c)(3) status;
    - (5) a list of all committees, including appointed board members and assigned staff;
    - (6) committee descriptions;
    - (7) the organization's [organization] policies, including fiscal, administrative, and programmatic;
    - (8) the organizational chart;
    - (9) the history of the organization;
    - (10) a list of program services and a brief description of each program;
    - (11) the current budget, including funding sources and sub-contractors;
    - (12) a brief description of contract provisions with attorneys, auditors, or other professionals;

(13) an explanation of the organization's insurance coverage, including directors' and officers' liability insurance or notification of inability to obtain insurance;

(14) [(13)] basic information about family violence; [and]

(15) [(44)] a brief history of the Texas Family Violence [Battered Women's] Movement;[:]

(16) an explanation of the organization's efforts to support underserved populations; and

(17) information on the intersection of family violence and barriers to services for underserved populations as well as a description of the organization's client and community demographics.

(b) The handbook may be made available in an electronic format.

*§356.1503. Board of Directors Training.*

(a) Every two years, each board member must receive the following:

(1) an explanation of the center's mission, philosophy, and a brief history;

(2) a discussion of the dynamics of family violence that includes power and control and trauma-informed services [an explanation of the dynamics of family violence that includes its causes and effects];

(3) a description of the organization's current programs; provided by program staff];

(4) a review of the organization's policies to determine if any modifications need to be made and clarification of any policy changes made during the previous year;

(5) training that includes information on the intersection of family violence and barriers to services for underserved populations as well as a description of the organization's client and community demographics;

(6) [(5)] an explanation of how the center is funded and future funding projections;

(7) [(6)] a discussion, presented by the appropriate board member, employee, or designated person, [chair or a member of the executive committee,] of the following:

(A) a review of the duties of a nonprofit board of directors as outlined in the Texas Business Organizations Code §22.221, Texas Nonprofit Corporation Act;

(B) [(A)] the board's role and responsibilities related to legal and fiscal accountability;

(C) the current bylaws, including a discussion on:

(i) [(B)] meetings and attendance requirements;

(ii) [(C)] committee duties, structure, and assignments; [and]

(iii) [(D)] fundraising [fund-raising] and public relations responsibilities; and

(iv) the conflict of interest policy;

[(7) an explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;]

(8) an explanation of the working relationship between the board and staff, including [but not limited to] which staff member to

contact [is contacted] regarding questions or requests and which staff members contact board members routinely; and

[(9) an update on any changes made in the Business Organizations Code, Chapter 22; and]

(9) [(40)] the organization's confidentiality policy and the importance of confidentiality, which must include the training required by §356.2014 of this chapter (regarding Confidentiality and Victim-Advocate Privilege Training).

(b) New board members must [should] receive this training within 60 days [three months] of starting their first term.

*§356.1504. Confidentiality and Victim-Advocate Privilege.*

Each board member must:

(1) provide written assurance that the member is knowledgeable of and will [know and] comply with the confidentiality requirements of this chapter [Health and Human Services Commission's rules] and the center's policies [related to confidentiality]; [and]

(2) provide written assurance to the center that the board member [she or he] will not use the position to obtain or access confidential program participant information when not authorized; and[:]

(3) provide written assurance to the center that the member is knowledgeable of, and will comply with, the victim-advocate privilege under Texas Family Code Chapter 93 and will not use the member's position to obtain or access privileged resident or nonresident information when not authorized.

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**DIVISION 2. CONTRACT STANDARDS**

**26 TAC §§356.1602, 356.1604, 356.1605**

**STATUTORY AUTHORITY**

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas

Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.1602. *Special Nonresidential Project Contract.*

A center may apply for a special nonresidential project contract; however, the proposed services may not ~~be~~ be the same as those required under this subchapter ~~[by the nonresidential center contract].~~

§356.1604. *Funding Waivers.*

(a) The Texas Health and Human Services Commission (HHSC) may waive the maximum prescribed funding percentage, as described in Human Resources Code §51.003(a), when at least one of the following occurs.~~;~~

(1) The center's income for the contract year decreased relative to the actual income received during the previous contract year. Decreases in funding caused by a center's noncompliance, negligence, or deficiencies will not be considered when making this calculation.

(2) The center's HHSC award for center services increases.

(b) If a center receives three or more funding waivers in a five-year period, the center may be subject to corrective action.

§356.1605. *Requesting a ~~Variance or~~ Waiver.*

~~[(a)]~~ To request a waiver from the maximum prescribed funding percentage, the center's board must submit:

(1) a completed Family Violence Program Waiver Request Form prescribed by the Texas Health and Human Services Commission; ~~[(HHSC);]~~

(2) supporting documentation of the need ~~[demonstrating the center's efforts to raise funds compared to its budget];~~ and

(3) a statement describing the center's efforts to raise funds compared to its budget.

~~[(3)]~~ a written agreement to receive technical assistance as designated by HHSC.~~;~~

~~[(b)]~~ To request a variance or waiver from any other requirement in this subchapter, the center's board must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver.~~;~~

~~[(c)]~~ A center's board may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.~~]~~

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DIVISION 3. FISCAL MANAGEMENT

26 TAC §§356.1701 - 356.1703

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new section affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.1701. *Accounting System Requirements.*

A center must maintain an accounting system and records that:

(1) follow Generally Accepted Accounting Principles (GAAP);

(2) ~~[(+)]~~ record ~~[records]~~ revenue and expenditures ~~[using generally accepted accounting principles];~~

(3) ~~[(2)]~~ establish ~~[includes]~~ a chart of accounts that lists all accounts by an assigned number;

(4) ~~[(3)]~~ contain ~~[contains]~~ a general ledger and subsidiary ledgers;

(5) ~~[(4)]~~ maintain accounting ~~[maintains supporting]~~ documentation for all revenue and expenditures, including~~;~~ ~~but not limited to~~:

(A) receipts or vouchers for revenue;

(B) bank statements reconciled to the general ledger bank accounts;

(C) journal entry justification;

(D) ~~[(C)]~~ canceled checks;

(E) ~~[(D)]~~ deposit slips;

(F) ~~[(E)]~~ approved invoices;

(G) ~~[(F)]~~ receipts;

(H) ~~[(G)]~~ leases;

(I) ~~[(H)]~~ contracts;

(J) ~~[(I)]~~ time and activity sheets;

(K) ~~[(J)]~~ inventory; and

(L) ~~[(K)]~~ cost allocation and indirect cost worksheets;

(6) ~~[(5)]~~ identify ~~[identifies]~~ all funding sources and expenditures by separate fund type; and

(7) ~~[(6)]~~ use ~~[uses]~~ a double-entry accounting system, either cash, accrual, or modified accrual.

§356.1702. *Cash or Non-Cash ~~[Cash/Non-Cash]~~ Resources Documentation.*

A center must develop, maintain, and comply with written internal policies and procedures to accurately document the non-Texas Health ~~[non-Health]~~ and Human Services Commission (HHSC) cash or non-cash

[~~cash/non-cash~~] resources required by HHSC under Texas Human Resources Code §51.003.

§356.1703. Fraud, Waste, and Abuse.

(a) A center must immediately report to the Texas Health and Human Services Commission (HHSC) Family Violence Program and the HHSC Office of Inspector General any suspected or confirmed fraud, waste, or abuse of funds paid from the HHSC contract related to family violence service delivery, whether or not such suspected or confirmed fraud, waste, or abuse was committed by the center's employees or the center's subcontractors.

(b) In addition to reporting to HHSC, a center must also report the fraud, waste, or abuse to the Office of the Attorney General of Texas or the State Auditor's Office.

(c) A center must fully cooperate with HHSC, the Office of the Attorney General of Texas, the State Auditor's Office, or any other state or federal regulatory agency involved in the investigation of the allegation of fraud, waste, or abuse.

(d) A center must not unlawfully disclose any personally identifying information of a victim in the course of reporting fraud, waste, or abuse.

(e) A center must comply with 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act, and Texas Family Code Chapter 93 during the investigation.

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## DIVISION 4. PERSONNEL

### 26 TAC §§356.1801 - 356.1803, 356.1805

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

#### §356.1801. Personnel Policies.

A center must develop, maintain, and comply with written personnel policies, approved by the board [Board] of directors [Directors], and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook. Employees [and] must be notified of new or changed personnel policies in accordance with the center's policies and in a timely manner. The handbook must address [at a minimum] the following:

- (1) contract labor;
- (2) conflicts [conflict] of interest;
- (3) family [domestic] violence in the workplace to include support for any staff experiencing family violence and violence occurring at the workplace;
- (4) nepotism;
- (5) the organization's non-discrimination policy;
- (6) [~~(5)~~] a hiring process that is uniform for all candidates for a particular position and includes:
  - (A) job posting;
  - (B) job descriptions with essential job functions;
  - (C) interviewing procedures [systems]; and
  - (D) reference checking and responding to reference checking;
- (7) [~~(6)~~] rules of conduct;
- (8) [~~(7)~~] hours and days of operation;
- (9) [~~(8)~~] employee benefits, including the accrual and use of paid time off [leave];
- (10) [~~(9)~~] employees' right to access their personnel files;
- (11) [~~(10)~~] written and oral employee orientation, initial training, and employee development;
- (12) [~~(11)~~] confidentiality requirements of employee records;
- (13) [~~(12)~~] employee evaluation;
- (14) [~~(13)~~] involuntary and voluntary termination; and
- (15) [~~(14)~~] a complaint process for [grievances originating from] current and former employees, which includes the center's response to a complaint.

#### §356.1802. Personnel Files.

A center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) employment application or resume;
- (2) current job description [descriptions];
- (3) signed acknowledgment of confidentiality agreement to be updated annually;
- (4) signed acknowledgment of receipt of the current personnel [policies and procedures] handbook as described in §356.1801 of this division (relating to Personnel Policies);
- (5) performance evaluations for every year of employment in accordance with the center's personnel policies;
- (6) documentation of orientation, initial training, and employee development;

- (7) any status or classification change;
- (8) all disciplinary actions and related documentation, if any; and
- (9) letters of praise or criticism, if any.

§356.1803. *Drug and Alcohol Policy.*

If under the jurisdiction of the Drug-Free Workplace Act, a center must develop, maintain, and comply with a written drug and alcohol policy that includes [at least] the following:

- (1) prohibition of [illegal] use or [illegal] possession of alcohol, illegal drugs, or drugs for which the employee does not have a prescription, if a prescription is required to possess the drug, while on duty;
- (2) a statement of practice rooted [belief] in a treatment and recovery approach;
- (3) a stated concern for employees and their recovery efforts;
- (4) information on available programs and systems for assistance; and
- (5) a statement of confidentiality.

§356.1805. *Ongoing Employee Training [Staff Development].*

(a) Every year, each employee must receive oral or written information regarding:

- (1) confidentiality and victim-advocate privilege requirements, including the center's policies for complying with the requirements;
- (2) federal, state, and program requirements as applicable to an employee's job description, including the requirements outlined in:
  - (A) this subchapter;
  - (B) 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act; and
  - (C) the Texas Health and Human Services Commission contract related to family violence service delivery; and
- (3) information on the intersection of family violence and barriers to underserved populations, as well as a description of the organization's client and community demographics.

(b) Direct service employees and their supervisors must also receive yearly training on the following:

- (1) best practices in family violence service delivery, including:
  - (A) trauma-informed and survivor-centered advocacy and voluntary services;
  - (B) access to services for underserved populations, including populations with disabilities;
  - (C) the intersection of family violence and mental health;
  - (D) the intersection of family violence and substance use;
  - (E) technology and data safety; and
  - (F) language and interpretation accessibility; and

(2) [(a)] [Direct service employees and their direct supervisors must receive] relevant training or staff development on topics related to their job descriptions as family violence center employees.

(c) [(b)] Direct service supervisors must [should] receive training that is relevant to the job descriptions of the people they supervise.

(d) Employees with access to personally identifying information must receive annual training in compliance with §356.2014 of this subchapter (relating to Confidentiality and Victim-Advocate Privilege Training).

(e) [(e)] The training described in this section [Training] may be provided virtually or in person [electronically].

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**26 TAC §356.1806, §356.1807**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.1806. *Legal Advocate.*

§356.1807. *Volunteer Coordinator.*

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## DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

### 26 TAC §§356.1901 - 356.1903

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

#### §356.1901. Facility Requirements for the Nonresidential Center.

A [~~The~~] center's facility must have:

- (1) a private meeting area for individual or group services;
- (2) access to bathroom facilities, including toilets and lavatories;
- (3) adequate safe space for children;
- (4) basic furnishings that are clean and in good repair;
- (5) clearly marked exits; and
- (6) smoke detectors, fire extinguishers, current fire inspections, and fire evacuation plans;
- (7) secure, clearly marked locations to store cleansers, solvents, and other hazardous items out of reach from children; and
- (8) [~~(6)~~] a stocked first-aid kit in all center facilities in central locations and communal spaces, as specified by center policy, that is accessible to all employees, and volunteers, and program participants.

#### §356.1902. Security System.

All Texas Health and Human Services Commission-funded centers [~~The center~~] must have [a] security systems [system] that are [is] operational 24-hours-a-day [24 hours a day]. The security system must [may] include; but is not limited to] an alarm system, outside lighting [special lighting], and secure locks [dead bolts, and agreements with local law enforcement].

#### §356.1903. Security Policies and Procedures.

(a) All Texas Health and Human Services Commission (HHSC)-funded centers [~~A center~~] must develop, maintain, and comply with written policies and procedures to promote the safety and

security of program participants, employees, and volunteers. These policies and procedures must address:

- (1) intruders [an intruder] on the property, including an abuser [such as a batterer];
- (2) assaults;
- (3) bomb threats;
- (4) threatening telephone calls;
- (5) natural disasters (e.g., hurricanes, tornadoes, floods, and fires);
- (6) epidemics, pandemics, and other public health emergencies;
- (7) [~~(6)~~] evacuations;
- (8) [~~(7)~~] power outages; and
- (9) [~~(8)~~] technology safety and data security.

(b) A center must notify HHSC immediately of any safety or security breaches listed in subsection (a) of this section that may disrupt services for 24 hours or longer, in accordance with §356.2026 of this subchapter (relating to Disruption in Providing Services). A center must include in the notice to HHSC an overview of the incident with the dates of impact, next steps, and a point of contact.

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## DIVISION 6. PROGRAM ADMINISTRATION

### 26 TAC §§356.2001 - 356.2004, 356.2006, 356.2007, 356.2009 - 356.2019, 356.2021, 356.2024, 356.2026, 356.2029, 356.2033 - 356.2035

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new sections affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and

§51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.2001. *Required Services.*

At a minimum, a [the] center must provide equal access to the services for victims of family violence [that are] outlined in 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act, and Texas [the] Human Resources Code[,] Chapter 51.

§356.2002. *Charging for Services.*

A center may not [cannot] charge or solicit contributions or donations in return for Texas Health and Human Services Commission-contracted services.

§356.2003. *Eligibility.*

(a) The following individuals are eligible for services under this chapter:

- (1) victims of family violence and dating violence; and
- (2) victims of sexual assault and human trafficking when the sexual assault or human trafficking meets the definition of family violence or dating violence.

(b) All victims described in this section are eligible for services regardless of the victim's current geographic location.

(c) A center must not require a victim to participate in center activities as a condition of receiving services.

§356.2004. *Federal and State Laws Regarding Eligibility.*

When determining eligibility for services, a center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- [(1) Human Resources Code, Chapter 51;]
- (1) [(2)] 42 United States Code (U.S.C.) §2000d, et seq., Title VI of the Civil Rights Act of 1964 [(Public Law 88-352)];
- (2) [(3)] 29 U.S.C. §701, et seq., Section 504 of the Rehabilitation Act of 1973 [(Public Law 93-112)];
- (3) [(4)] 42 U.S.C. §12101, et seq., Americans with Disabilities Act of 1990 [(Public Law 101-336)];
- (4) [(5)] 42 U.S.C. §§6101-6107, Age Discrimination Act of 1975 [(42 U.S.C. §§6101-6107)];
- (5) 42 U.S.C. Chapter 110, the Family Violence Prevention and Services Act;
- (6) Texas Human Resources Code Chapter 51;
- (7) Texas Health and Safety Code §85.113, relating to Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and
- (8) [(6)] Texas Health and Human Services Commission regulations regarding civil rights.[]]
- [(7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS; and]
- [(8) the Family Violence Prevention Services Act (42 U.S.C. Chapter 110).]

§356.2006. *Denial of Services.*

A center may not [can] deny services to an otherwise eligible victim as described in §356.2003 of this division (relating to Eligibility) unless

the center adopts [of family violence only if it has] written policies in accordance with this section that outline specific behaviors that would make a victim ineligible for such services. Under this section, these [These] policies must:

- (1) address only behaviors that threaten the safety and security of staff and program participants;
- (2) apply equally to all people;
- (3) comply with the laws and regulations described in §356.2004 [§379.2004] of this division (relating to Federal and State Laws Regarding Eligibility); and
- (4) contain procedures that take into consideration the safety of the victim and requires appropriate referrals to other service providers.

§356.2007. *Eligibility of Previously Involuntarily Terminated Program Participants.*

(a) A center must develop, maintain, and comply with written policies and procedures to assess the safety [and appropriateness] of providing services to a program participant [victim] whose services were previously involuntarily terminated and who is currently requesting services.

(b) A center must assess each request for service from a person who was previously involuntarily terminated.

(c) A center may not deny services to a victim who was previously involuntarily terminated based solely on the victim's previous involuntary termination.

§356.2009. *Nonresidential Services for a Minor [Person Under 18 Years of Age].*

(a) For the purposes of this section, "minor" means a person under 18 years of age who:

- (1) is not and has not been married; or
  - (2) has not had the disabilities of minority removed for general purposes.
- (b) [(a)] A nonresidential center may provide a nonresidential service to a minor if:

(1) the minor consents to counseling from a licensed or certified physician, psychologist, counselor, or social worker, under Texas Family Code §32.004, for:

- (A) suicide prevention;
- (B) chemical addiction or dependency; or
- (C) sexual, physical, or emotional abuse;

(2) the center obtains [has] consent from the minor's parent, managing conservator, or guardian to provide the minor with nonresidential services; or

(3) the center otherwise complies with Texas Family Code[,] Chapter 32, even if the center does not obtain consent from the minor's parent, managing conservator, or guardian.

(c) [(b)] Notwithstanding subsection (b) [(a)] of this section, a victim who is a minor [of family violence under 18 years of age] may consent to a nonresidential service provided by a nonresidential center if:

- (1) the victim is married or has been married; or
- (2) the victim has had the disabilities of minority removed for general purposes [(i.e., is legally emancipated)].



§356.2010. *Termination of Services.*

(a) A center must develop, maintain, and comply with written policies and procedures that:

(1) outline behaviors that threaten the safety and security of staff and program participants for which the center may terminate services [can be terminated];

(2) do not allow for termination of a program participant's services for any reason other than behaviors that threaten the safety and security of staff and other program participants;

(3) allow considerations for program participants to have contact with an abusive partner without grounds for termination;

(4) ~~[(2)]~~ address how current and former program participants can appeal terminations and file complaints [grievances] with the center;

(5) ~~[(3)]~~ apply equally to all people; ~~[and]~~

(6) ~~[(4)]~~ comply with: ~~[the Americans with Disabilities Act, Title VI of the Civil Rights Act, §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable laws and regulations]~~

(A) the laws and regulations described in §356.604 of this division (relating to Federal and State Laws Regarding Eligibility); and

(B) other applicable laws and regulations; and

(7) allow a resident or nonresident to voluntarily terminate their services at any time.

(b) Before termination of [When terminating] services to a program participant [participants], regardless of whether the participant's termination is voluntary [voluntarily] or involuntary [involuntarily], the center must make reasonable efforts to:

(1) assist the program participant in re-evaluating the program participant's [their] safety plan [plans];

(2) assist in obtaining alternate resources for the program participant [participants] whose services are terminated;

(3) provide written notice to the program participant of the termination;

(4) provide written notice to the program participant of the right to file a complaint [grievance] with the center and an [the] explanation of the center's complaint [grievance] procedure; and

(5) upon request of the program participant, provide contact information to the program participant for the Texas Health and Human Services Commission Family Violence Program for complaint purposes.

(c) Program participants may voluntarily terminate their services at any time.

§356.2011. *General Confidentiality and Victim-Advocate Privilege Policy.*

A center must have a written general confidentiality and victim-advocate privilege policy that provides:

(1) that the center will keep all information about a resident or nonresident [will be kept] confidential, including all personally identifying [personal] information and all communications, observations, and information made by and between or about adult and child program participants, employees, contract staff, volunteers, [student] interns, and board members;

(2) a statement about the importance of confidentiality and victim-advocate privilege in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program;

(3) the parameters of what must be held confidential and by whom, including internal communications between staff regarding program participants [clients];

(4) the limits of confidentiality under the law;

(5) the parameters of what must be held privileged, if claimed, and by whom, including internal communications between staff regarding program participants;

(6) the limits of any victim-advocate privileged information under the law;

(7) ~~[(5)]~~ a designation of custodian of the records;

(8) ~~[(6)]~~ procedures for:

(A) retention and destruction of records;

(B) responses to court orders;

(C) release of information;

(D) reports of abuse or suspected abuse of:

(i) a child [children];

(ii) a person 65 years of age or older [the elderly];

(iii) a person [people] with a disability [disabilities];

(9) ~~[(7)]~~ requests for information under the Texas Public Information Act;

(10) ~~[(8)]~~ maintenance of records; and

(11) ~~[(9)]~~ access to records that comply with confidentiality provisions in state and federal law.

§356.2012. *Confidentiality and Victim-Advocate Privileged Information for Adult Program Participants.*

(a) A center must provide to adult program participants, verbally and in writing, [at least] the following information:

(1) that program participants have the right to access [see] their records and the process by which program participants may access their records without incurring a fee;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the program participant's [participants' case files and] records;

(4) an overview of the center's policy and practices on confidentiality;

(5) an overview of the center's policy and practices on victim-advocate privilege;

(6) ~~[(5)]~~ current state and federal laws regarding the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

(A) a child [children];

(B) a person 65 years of age and older [ the elderly];  
and

(C) a person [people] with a disability;

(7) [(6)] an overview of the center's policy for responding to court orders;

(8) [(7)] an overview of the center's policy for requests for information under the Texas Public Information Act;

(9) [(8)] an overview of the center's policy for release of information;

(10) [(9)] when the records will be decoded or destroyed;  
and

(11) [(10)] an overview of what kind of information will remain in the record after [file onee] a program participant terminates services.

(b) If a center is unable to provide the information described in subsection (a) of this section in writing, the center must maintain documentation stating the reason why the information could not be provided in writing.

§356.2013. Confidentiality and Victim-Advocate Privilege Agreements.

(a) A center must require that [have] all employees, contract staff, volunteers, board members, [student] interns, and adult program participants sign a confidentiality and victim-advocate agreement. The confidentiality and victim-advocate agreement must have a provision that states that confidentiality must be maintained after an employee, contract staff, volunteer, board member, [student] intern, or program participant leaves the center. The signed confidentiality and victim-advocate privilege agreements must be placed:

(1) in the personnel file [files] of an employee [the employees];

(2) in the corporate records of a [the] board member [members]; and

(3) in the individual file [files] of contract staff, volunteers, [student] interns, and program participants.

(b) A center must have a policy in place to ensure survivor confidentiality when a visitor is on the premises in spaces where program participants are present.

(c) If a victim is unable to physically sign the confidentiality and victim-advocate privilege agreement required in subsection (a) of this section due to a bona fide emergency:

(1) the victim must verbally agree to adhere to the confidentiality and victim-advocate privilege agreement; and

(2) the center must:

(A) maintain documentation of the verbal agreement;

and

(B) obtain a signed agreement as soon as feasible from the victim.

(d) For the purposes of subsection (c) of this section, a "bona fide emergency" is one in which the victim has limited access to means of communication and may need to terminate communication abruptly in order to avoid detection of the communication by the victim's abuser.

§356.2014. Confidentiality and Victim-Advocate Privilege Training.

A center must provide training annually to employees, contract staff, board members, volunteers, and interns who have access to personally identifying information[, and interns] on:

(1) confidentiality policies and procedures;

(2) victim-advocate privilege policies and procedures;

(3) [(2)] the importance of confidentiality for victims of family violence;

(4) [(3)] how information is recorded; [and]

(5) procedures for responding to court orders and any other requests for confidential or privileged information;

(6) [(4)] state and federal laws regarding confidentiality;  
and

(7) state laws regarding victim-advocate privilege under Texas Family Code Chapter 93.

§356.2015. Information in Program Participant Records [Files].

A center must limit the information kept, both written and electronically, in a program participant's record [files] to information necessary for:

(1) statistical and funding purposes;

[(2) establishing goals for intervention and advocacy;]

(2) [(3)] documenting the survivor-stated need for and delivery of services; and

(3) [(4)] protecting the liability of the center and its employees, contract staff, volunteers, interns, and board members.

§356.2016. Policies and Procedures Regarding Entries in a Program Participant's Record [Files].

(a) A center must develop, maintain, and comply with written policies and procedures regarding entries into a program participant's file that require that:

(1) each entry [must] be attributed to and dated by the employee or volunteer entering the information;

(2) a program participant's record does [participant file must] not include the names of other program participants; and

(3) if the center provides direct services for both the victim and the abuser, the center maintains a separate record for each, one for the victim and one for the abuser [violent family member, the center must, at a minimum, maintain separate case records to promote victim safety and confidentiality].

(b) A center must develop, maintain, and comply with written policies and procedures that [to] ensure a program participant may [has] access and [to] review all information in the participant's record [her or his case file].

(c) If a program participant contests an [a case file] entry made in the participant's record [her or his file], the center must either:

(1) remove the entry from the record [file]; or

(2) if the entry is not removed, note in the record [case file, if the entry is not removed,] that the program participant has contested [believes] the entry [to be inaccurate].

(d) A center may create and store entries to a program participant's record [files] electronically, provided that:

(1) electronic entries are secure and attributed to an individual, which may include password-protected system access; and

(2) records are kept in compliance with applicable state and federal laws, including 42 United States Code (U.S.C.) Chapter 110, the Family Violence Prevention and Services Act [(42 U.S.C. Chapter 110)], and §§356.1903, 356.2017, and 356.2023 [§§379.1903,

379.2017, and 379.2023] of this subchapter (relating to Security Policies and Procedures; Maintaining Control Over [over] Program Participant Records [Files]; and Policies and Procedures for the Retention and Destruction of Documentation).

§356.2017. Maintaining Control Over [over] Program Participant Records [Files].

A center must develop, maintain, and comply with written procedures that:

(1) outline the responsibilities of the custodian of the records, designated by the center's executive director, for maintaining control over [the] program participants' [participant] records, including a [the] court's access to the records;

(2) require that program participants' [participant] records are [to be] kept secure and not [be] removed from the center's premises without the written permission of the custodian of the records;

(3) provide for the safekeeping of program participants' [participant] records in the event of the center's closure; and

(4) allow a program participant to access the program participant's record [her or his records] in the event of the center's closure without assessing a fee.

§356.2018. Release of Program Participant Information.

(a) A center may not release program participant information, orally or in writing, unless the program participant completes a properly executed [only if it first obtains a written] release of information form created by the center, for the purpose of consenting to the release of the program participant's [of] information [from the program participant].

(b) This section does not apply when responding to subpoenas, court orders, or other requests for information with which a center is legally required to comply. However, this subsection does not prohibit a center from asserting any relevant objections, claims of privilege, or other legally permissible responses prior to releasing such information.

(c) [(b)] Regardless of whether a written release of information form from a program participant is obtained, a [the] center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

- (1) a child [children];
- (2) a person 65 years of age and older [the elderly]; and
- (3) a person [people] with a disability [disabilities].

(d) An abuser or suspected abuser of a minor or of an individual with a guardian, as well as the abuser or suspected abuser of a survivor parent of the minor or of a guardian of the individual, may not consent to the release of the information of the minor or individual with a guardian.

(e) For the purposes of this section, "minor" means a person under 18 years of age.

§356.2019. Release of Program Participant Information Form [Document].

The release of a program participant's information form [document] must include the following:

- (1) the name of no more than one person or one organization to which the information is being released;
- (2) the specific information to be released;
- (3) the beginning and ending dates the release is effective, not to exceed the program participant's active length of services;

(4) the date and the signatures of the program participant and the employee or volunteer releasing the information; and

(5) a statement of the program participant's right to revoke, in writing, a release of information at any time. [This revocation request must be submitted in writing.]

§356.2021. Procedures Regarding Court Orders.

A center must develop, maintain, and comply with written policies and procedures for responding to court orders, [such as] subpoenas, search warrants, and [or] writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order or other legal document;

(2) on whom court orders and other documents may be served, such as the custodian of the records or the executive director, or, in the executive director's absence, designated staff;

(3) which attorney or attorneys [attorney(s)] should be contacted;

(4) the process by which the center will make reasonable attempts to provide notice to victims affected by a potential release of information;

(5) [(4)] who will discuss the court order or other legal documents [subpoena] and legal options with the program participant or other victim of family violence, and at what point;

(6) [(5)] information about compliance with state and federal confidentiality and victim-advocate privilege provisions; [and]

(7) [(6)] the circumstances under which records may be released; and[.]

(8) an affirmative statement that the center will take steps necessary to protect the privacy and safety of the persons affected by the release of information under state and federal laws.

§356.2024. Minimum Hours for a Nonresidential Center.

A nonresidential center must provide services to victims of family violence a minimum of 40 hours per week with a consistent schedule of service hours that best supports the needs of the community [that may be regular business hours or other hours as approved by the Health and Human Services Commission].

§356.2026. Disruption in Providing Services.

(a) A center must develop, maintain, and comply with written policies and procedures for any disruption anticipated to last 24 hours or longer that may affect the ability of the center to provide services either in person, by phone, or remotely. [in the ability to provide services.]

(b) Any disruption in the ability to provide services must be [verbally] reported immediately to the Texas Health and Human Services Commission (HHSC).

(c) The report [After the initial verbal notification, the center must submit] to HHSC required by subsection (b) of this section must include [within two weeks,] a detailed [written] description of the disruption and how services will be or were maintained.

§356.2029. Community Education and Prevention.

(a) A center must have written policies and procedures about community education that:

(1) ensure that community education is provided to as many diverse groups as possible in each county where services are provided, including underserved communities;

(2) focus part of the community education on informing victims of family violence of existing family violence services; and

(3) comply with §356.2008 and §356.2034 [~~§379.2008~~] of this division (relating to Access to Services for People with Limited English Proficiency and Access to Services for People with a Disability).

(b) When providing community education, a center must:

- (1) use presentations;
- (2) use online media or virtual forums;
- (3) [~~(2)~~] distribute written materials; and
- (4) [~~(3)~~] establish and use media contacts.

(c) A center may offer primary and secondary prevention as a component of community education.

§356.2033. *Content* [CContent] of Training for Non-Direct Service Volunteers.

If a nonresidential [A] center has non-direct service volunteers, the center must provide non-direct service volunteers with:

- (1) a basic orientation of the duties they perform;
- (2) the center's policies and procedures regarding confidentiality and victim-advocate privilege; and
- (3) [~~at a minimum,~~] basic information about the organization's mission, philosophy, and policies.

§356.2034. *Access to Services for People with a Disability.*

(a) A nonresidential center must:

- (1) serve people with a disability and take reasonable steps to ensure meaningful access to the program;
- (2) take appropriate steps to ensure that communications with a victim with a disability, a victim's dependents with a disability, and members of the public with a disability are as effective as communications with persons who do not have a disability; and
- (3) furnish appropriate auxiliary aids and services when necessary to ensure that eligible individuals with a disability, including a victim, a victim's dependents, and members of the public have equitable access to services.

(b) Auxiliary aids and services described in subsection (a)(3) of this section may include qualified interpreters and large print materials.

§356.2035. *Service Model.*

A nonresidential center must:

- (1) develop, maintain, and comply with a written advocacy service model that is:
  - (A) voluntary;
  - (B) trauma-informed; and
  - (C) respects an individual's needs;
- (2) develop training requirements for all employees, contract staff, interns, and volunteers that provide direct services to survivors regarding the advocacy service model, including the importance of and best practices for voluntary and trauma-informed services; and
- (3) have written policies and procedures to evaluate the effectiveness of the service model and report the results to the Texas Health and Human Services Commission as requested.

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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**26 TAC §§356.2003, 356.2020, 356.2022, 356.2028, 356.2030, 356.2031**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

*§356.2003. Eligibility.*

*§356.2020. Court Orders.*

*§356.2022. Notification of Court Orders.*

*§356.2028. Cooperation With Criminal Justice Officials.*

*§356.2030. Volunteer Program.*

*§356.2031. Volunteer Recruitment.*

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**DIVISION 7. SERVICE DELIVERY**

26 TAC §§356.2101 - 356.2108, 356.2110, 356.2112, 356.2114, 356.2115

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The amendments and new sections affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.2101. *Nonresidential Center Services.*

(a) A ~~[The]~~ center must provide ~~[, at a minimum,]~~ access to the following services directly, by referral, or through formal arrangements with other agencies, and have written procedures regarding these services as described in this subchapter:

- (1) 24-hour-a-day shelter;
- (2) a crisis call hotline available 24 hours a day, in compliance with §356.2008 and §356.2034 of this subchapter (relating to Access to Services for People with Limited English Proficiency and Access to Services for People with a Disability);
- (3) emergency medical care;
- (4) crisis and intervention services, including ~~[safety planning,]~~ understanding and support, information, education, referrals, and other resource assistance ~~[and developing individual service plans];~~
- (5) emergency transportation;
- (6) advocacy focused on:
  - (A) economic and housing stability;
  - (B) physical, behavioral, and mental health;
  - (C) the needs of children who are victims and the children of victims; and
  - (D) the civil and criminal legal systems, including identifying individual needs, legal rights and legal options, and providing support and accompaniment in pursuing those options;
- ~~[(6) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights and legal options and providing support and accompaniment in pursuing those options;]~~
- (7) ongoing safety planning services in collaboration with the self-stated priorities and needs of the victim of family violence;
- ~~[(7) information about educational arrangements for children;]~~
- (8) community education regarding family violence and family violence prevention efforts;

~~[(8) information about training for and seeking employment; and]~~

(9) counseling services; and

~~[(9) a referral system to existing community services.]~~

(10) peer support services led by victims of family violence, including activities and other efforts that facilitate connections and the creation of community among victims of family violence.

(b) All services must be provided under a voluntary and trauma-informed service model as described in §356.2035 of this subchapter (relating to the Service Model).

§356.2102. *Reporting Data to HHSC [Data Collection].*

(a) A center must regularly report complete and accurate data through the secure file transport protocol designated [data collection system approved] by the Texas Health and Human Services Commission (HHSC); using service definitions in the Nonresidential Center Provider Manual. Data submission is due by the deadline specified in the HHSC contract related to family violence service delivery. HHSC reserves the right to impose sanctions if a center does not submit complete and accurate data by the deadline specified in the contract [are not submitted on time].

(b) If extenuating circumstances exist, a center must notify HHSC in writing before the due date of the data submission to request an extension of said due date.

~~[(b) In the event that the center may not be able to provide services due to a natural disaster or fire, the affected center will consult with HHSC regarding whether exceptions to data reporting deadlines and data collection service definitions should be made.]~~

(c) A center must contact HHSC via email within two business days of discovering data errors or inconsistencies that will result in the center's inability to report accurate data in a timely manner.

(d) [(e)] When collecting and reporting data, a [the] center must comply with state and federal confidentiality provisions. Data a center submits must be in the aggregate and not contain personally identifying information.

(e) Program participant data collected for HHSC reporting must be provided voluntarily by a program participant and a program participant may refuse to offer any element of data at any time.

(f) A center must notify HHSC within 24 hours after discovery of a data breach. Notification must include all information reasonably available to the center about the breach and contact information for the center's point of contact who will communicate with HHSC regarding the breach.

(g) A center must provide written notification to HHSC by the third business day after discovery of a data breach of the following:

(1) all reasonably available information about the data breach, and the center's investigation, to the extent practicable;

(2) the date the data breach occurred;

(3) the date of the center's and, if applicable, subcontractor's discovery of the data breach;

(4) a brief description of the data breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);

(5) a brief description of the center's investigation into the data breach and the status of the investigation;

(6) a description of the types and amount of confidential information involved;

(7) the steps the center has taken to mitigate any harm or potential harm caused by the data breach, including without limitation the provision of sufficient resources to mitigate;

(8) the steps the center has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar data breach;

(9) identify and describe any law enforcement that may be involved in the response to the data breach;

(10) a reasonable schedule for the center to provide regular updates regarding response to the data breach; and

(11) any reasonably available, pertinent information, documents, or reports related to the data breach that HHSC requests following the report of the data breach.

§356.2103. Crisis Call Hotline.

(a) A center must operate a hotline and comply with Texas Health and Human Services Commission (HHSC) requirements unless another organization located in the nonresidential center's service area provides a hotline that complies with HHSC requirements.

(b) If a [the] center operates a [the] hotline, the center [it] must:

(1) ensure that [answer the hotline 24 hours a day, every day of the year, by] an individual trained in crisis intervention, or who has immediate access to someone who has had [this] training, answers the crisis call hotline 24-hours-a-day, every day of the year;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number across all relevant publications in [in all telephone directories within] the center's service area and on the center's website, if applicable;

(4) provide a minimum of two hotline telephone lines;

(5) ensure that the caller has direct access to a live person who is trained to assess the caller's [person's] safety and that a messaging system is not used to answer the hotline;

(6) provide caller identification (ID) [ID] blocks on the center's numbers for outgoing calls [to program participants and other victims of family violence, which may only be unblocked with permission from the program participant or victim of family violence];

(7) ensure compliance [the screening process complies] with all state and federal laws, including §356.2004 of this subchapter (relating to Federal and State Laws Regarding Eligibility), when using [if] the hotline to determine [is used to screen for] eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide equitable [meaningful] access to persons with a disability [disabilities], as required by §356.2034 of this subchapter (relating to Access to Services for People with a Disability) [including victims of family violence with sensory and speech impairments];

(10) ensure the center can [is able to] provide equitable [meaningful] access to people with limited English proficiency as required by §356.2008 of this subchapter (relating to Access to Services for People with Limited English Proficiency); and

(11) if the center uses caller ID or any other technology that establishes a record of calls on the hotline, the center must:

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) comply with the confidentiality requirements of §356.2023 [§379.2023] of this subchapter (relating to Policies and

Procedures for the Retention and Destruction of Documentation) regarding the records generated by caller ID or other technology.

§356.2104. Transferring the Crisis Call Hotline.

(a) A center may transfer its crisis call hotline to another center only if:

(1) there is a telephone or staffing disruption that will last for more than twenty-four hours;

(2) the transferring center develops, maintains, and complies with written policies and procedures that address how the center receiving the transferred hotline calls meets the Texas Health and Human Services Commission's (HHSC) training requirements for all direct service staff and ensures immediate access to the accepting center's 24-hours-a-day services; and

(3) the transferring center obtains HHSC's approval of the arrangement with the center accepting the transferred calls.

(b) A center may transfer its crisis call hotline without obtaining HHSC's approval as described in subsection (a) of this section only when the center transfers the hotline to the National Domestic Violence Hotline.

(c) A center may not transfer its crisis call hotline to law enforcement.

§356.2105. Medical Care.

A center is not required to provide or pay for emergency medical care, but must:

(1) maintain a current list of [emergency] medical care resources that meet the diverse needs of survivors, including preventative care, and that can provide medical services for victims of family violence and their dependents, including, when available: [; and]

(A) local affordable options; and

(B) local physical, mental, and behavioral health resources.

(2) develop, maintain, and comply with written policies and procedures about providing or arranging for emergency transportation to and from emergency medical facilities for program participants or victims of family violence and their dependents being considered for acceptance as program participants; and [.]

(3) maintain and provide standard first aid medical supplies that are accessible to program participants 24-hours-a-day.

§356.2106. Program Participant's Orientation.

(a) A center must ensure that an orientation is provided to a program participant verbally [orally] and in writing. [; is documented, and includes, but is not limited to:] The orientation must be documented and comply with the requirements in this chapter, as appropriate, and the Family Violence Prevention and Services Act (42 United States Code (U.S.C.) Chapter 110) regulations. The orientation must include:

(1) an explanation of services available;

(2) the center's termination policy;

(3) program participants' rights;

(4) a nondiscrimination statement, in accordance with the Family Violence Prevention and Services Act (42 U.S.C. Chapter 110);

(5) complaint [grievance] procedures;

(6) contact information for the Texas Health and Human Services Commission (HHSC), as specified in the center's contract with HHSC;

(7) [(6)] safety and security procedures;

(8) [(7)] confidentiality and limits of confidentiality, as well as victim-advocate privilege and limits of victim-advocate privilege;

(9) [(8)] waivers of liability; and

(10) [(9)] a wellness check for all family members that addresses each person's [their] immediate needs.

(b) If a center is unable to provide the program participant's orientation in writing, the center must maintain documentation of the reason.

§356.2107. Needs Assessment.

(a) A center must document in writing each program participant's self-stated needs and requests for available services to address these needs.

(b) A center must attempt to re-evaluate the needs of a program participant regularly and at re-entry to the center.

(c) A center must not use a program participant's needs assessment to require the program participant to participate in services.

§356.2108. Support Groups [Group Intervention].

A center must[;]

[(+) provide at least one weekly voluntary support group for adult program participants.]; and]

[(2) not mandate adult program participant attendance at weekly support groups.]

§356.2110. Delivery of Children's Direct Services.

A center must:

(1) have developmentally appropriate services available that are specific to meet the needs of children, including information and referral services; and

(2) make reasonable accommodations to provide voluntary, developmentally appropriate recreational or social activities for children during the time in which the adult parent is receiving in-person services.

§356.2112. Child Care Permit.

A center that provides child care at the center may be subject to Texas Health and Human Services Commission regulation under Texas Human Resources Code Chapter 42, relevant sections of Chapter 745, Chapter 743, and Chapter 746 of this title (relating to Licensing, Minimum Standards for Shelter Care, and Minimum Standards for Child-Care Centers, respectively), and the relevant set of minimum standards.

§356.2114. Client Assistance Funds.

(a) A center must develop, maintain, and comply with written policies and procedures regarding program participants' access to client assistance funds, when funds are available, that are consistent and equitable.

(b) A center must provide direct client assistance funds to program participants in compliance with the laws and regulations described in §356.2004 of this subchapter (relating to Federal and State Laws Regarding Eligibility).

§356.2115. Counseling Services.

(a) A center must ensure counseling services are available to a program participant either by:

(1) employees, contract staff, interns, or volunteers of the center; or

(2) counseling services providers contracted by the center.

(b) If a center is unable to provide counseling services in accordance with subsection (a) of this section, the center may offer a referral to a counseling service that is no cost to a program participant.

(c) Counseling services can include both traditional and non-traditional modalities of counseling and support to meet the mental health and wellness needs of a program participant.

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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**26 TAC §§356.2104, 356.2107, 356.2109, 356.2112 - 356.2114**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The repeals affect Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.2104. Subcontracting the Crisis Call Hotline.

§356.2107. Individual Service Plans.

§356.2109. Religion and Intervention Services.

§356.2112. Texas Department of Family and Protective Services' (DFPS) Child Care Permit.

§356.2113. Legal Assistance Services.

§356.2114. Training and Employment Services.

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◆ ◆ ◆  
SUBCHAPTER E. WRITTEN NOTICE TO VICTIMS

DIVISION 1. NOTICE

26 TAC §356.2201

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program; Texas Human Resources Code §51A.003, which requires HHSC to adopt by rule the notice to victims of family violence, stalking, harassment, and terroristic threat; Texas Family Code Chapter 93, which creates the victim-advocate privilege; and Senate Bill 1841, 88th Legislature, Regular Session, 2023, which made several changes to requirements for contracts with family violence centers.

The new section affects Texas Government Code §531.0055; Texas Human Resources Code §51.010 and §51A.300; Texas Family Code Chapter 93; and Senate Bill 1841, 88th Legislature, Regular Session, 2023.

§356.2201. Written Notice.

The Texas Health and Human Services Commission (HHSC) shall create and maintain a written notice to be provided to victims of family violence, stalking, harassment, or terroristic threat to assist those in victims in obtaining services. The notice must be:

- (1) available in both English and Spanish;
- (2) available on the HHSC website; and
- (3) reviewed annually to determine if changes to the notice are necessary.

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 December 3, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 460-0992

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER E. PROVIDER REQUIREMENTS

26 TAC §370.456

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §370.456,

concerning Prohibition of Provider Discrimination Based on Immunization Status.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Texas Government Code §531.02119, added by House Bill 44, 88th Legislature, Regular Session, 2023, which requires HHSC to adopt rules necessary to prohibit Medicaid and Children's Health Insurance Program (CHIP) providers from discriminating against Medicaid recipients or CHIP members by refusing to provide health care services based solely on immunization status.

Texas Government Code §531.02119 outlines the requirements for the prohibition of discrimination based on immunization status, exceptions to this prohibition, requires HHSC to withhold payment from providers that violate the requirements until HHSC finds the provider is in compliance, and requires HHSC to establish administrative and judicial reviews for providers who are alleged to be in violation.

SECTION-BY-SECTION SUMMARY

Proposed new §370.456 prohibits CHIP provider discrimination of CHIP members based solely on the member's vaccination status. Specifically, the proposed rule (1) contains the express prohibition of discrimination based on vaccination status dictated by Texas Government Code §531.02119; (2) outlines the types of requests CHIP providers must accept for CHIP members who are seeking to be exempt from a provider's vaccination requirement policy; (3) contains a list of providers exempt from these requirements; (4) outlines when HHSC will withhold payment from a provider found to be noncompliant and when HHSC may not withhold a payment; and (5) establishes the right of a provider to seek administrative and judicial review of an HHSC decision to withhold payment.

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, there is a potential for a decrease in costs to state government as a result of enforcing and administering the rule as proposed, since HHSC will not pay for any health care services provided by a CHIP provider who refuses to provide health care services because of a member's refusal or failure to obtain a vaccination or immunization. HHSC is unable to determine the cost savings because it is unknown how many providers will not comply with the proposed rule and how many health care services will not be paid for by HHSC.

Trey Wood 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 local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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



- (5) the proposed rule will create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations.
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule prohibits CHIP providers from refusing health care services because a member refuses or fails to obtain a vaccination or immunization and provides a process for administrative and judicial review of an alleged violation of the provision. Although a provider may continue to refuse services, HHSC will not pay the provider for any healthcare services until the provider complies with the proposed rule.

**LOCAL EMPLOYMENT IMPACT**

The proposed rule will not affect a local economy.

**COSTS TO REGULATED PERSONS**

Texas Government Code §2001.0045 does not apply to the 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 rules.

**PUBLIC BENEFIT AND COSTS**

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the section is in effect the public benefit will be that CHIP members may experience less discrimination by providers based on the member's vaccination status.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule will not incur economic costs because a CHIP provider may choose to not provide services to a member based on vaccination status. The proposed rule provides a process for administrative and judicial review of an alleged violation of the provision, and the provider can still choose not to comply with the proposed rule. HHSC will not pay a provider for services only when HHSC determines the provider has violated the proposed rule.

**TAKINGS IMPACT ASSESSMENT**

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

**PUBLIC COMMENT**

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

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

midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R058" in the subject line.

**STATUTORY AUTHORITY**

The new section is proposed under the authority granted to HHSC by Texas Government Code §531.02119, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to prohibit a CHIP provider from refusing to provide health care services to a CHIP member based solely on the member's immunization status; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties; and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance Program.

The new section affects Texas Government Code §§531.02119 and 531.033, and Human Resources Code §62.051(d).

§370.456. Prohibition of Provider Discrimination Based on Immunization Status.

(a) Pursuant to Texas Government Code §531.02119, a Children's Health Insurance Program (CHIP) provider may not refuse to provide health care services to a CHIP member based solely on the member's refusal or failure to obtain a vaccine or immunization for a particular infectious or communicable disease.

(b) Notwithstanding subsection (a) of this section, a provider is not in violation of this section if the provider:

(1) adopts a policy requiring some or all the provider's patients, including patients who are CHIP members to be vaccinated or immunized against a particular infection or communicable disease to receive health care services from the provider; and

(2) provides an exemption to the policy described in paragraph (1) of this subsection and accepts an oral or written request from the CHIP member or legally authorized representative, as defined by Texas Health and Safety Code §241.151, for an exemption from each required vaccination or immunization based on:

(A) a reason of conscience, including a sincerely held religious belief, observance, or practice, that is incompatible with the administration of the vaccination or immunization; or

(B) a recognized medical condition for which the vaccination or immunization is contraindicated.

(c) This section does not apply to a provider who is a specialist in:

(1) oncology; or

(2) organ transplant services.

(d) HHSC or its designee withholds payments to any CHIP participating provider only if HHSC determines the provider is in violation of this section.

(1) HHSC withholds payments for services to the provider until HHSC determines the provider corrected the circumstances resulting in the vendor hold.

(2) A provider has the right to appeal an HHSC vendor hold as provided by Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(3) If the final decision in the administrative review is adverse to the appellant, the appellant may obtain a judicial review by filing for review with a district court in Travis County not later than the 30th day after the date of the notice of the final decision as provided under Texas Government Code Chapter 2001.

(e) Subsection (d) of this section applies only to an individual provider. HHSC or its designee may not refuse to reimburse a provider who did not violate this section based on the provider's membership in a provider group or medical organization with an individual provider who violated this section.

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

Filed with the Office of the Secretary of State on December 3, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§34.515, 34.614, 34.714, and 34.814, concerning the fees charged by the State Fire Marshal's Office (SFMO) to revise or change an address for fire extinguisher, fire alarm, fire sprinkler, and firework permits, licenses, and certificates of registration. The amendments set fees of \$0 for requests to update an address, provided the change of address is done within the prescribed 14 days, as provided by 28 TAC §§34.510 - 34.512, 34.610, 34.611, 34.710, 34.711, and 34.810.

TDI also proposes to amend 28 TAC §34.1302(a) - (c) and (f), concerning the administrative penalty schedule, to add a new penalty of \$250 for failure to revise or change an address within the required 14 days.

**EXPLANATION.** The purpose of these proposed amendments is to allow for licensees and certificate holders for the fire extinguisher, fire alarm, fire sprinkler, and firework programs to conveniently update their addresses by eliminating the fees currently required to make those updates. The amendments outline online address changes. Insurance Code §6001.055(c) and §6002.054(c) provide that the commissioner set a fee not to exceed \$20, and Insurance Code §6003.055(c) provides that the commissioner set a fee not to exceed \$70 for any request for changes to or a duplicate of a registration, certificate, license, or permit.

Under the current version of the rules, a request to change address is treated the same way as other certificate and license change requests: it is subject to a \$20 fee (§§34.515, 34.614, and 34.814) or \$35 fee (§34.714). The amendments to §§34.515, 34.614, 34.714, and 34.814 establish a \$0 fee

for licensees and certificate holders requesting a change of address for fire extinguisher, fire alarm, fire sprinkler, and firework licenses and certificates. The amendments are intended to promote overall efficiency and convenience in keeping address information updated and reduce compliance costs for the industry.

SFMO requires an accurate address for its licensees and certificate holders. Under Government Code §417.005, the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.010 requires the commissioner to adopt by rule a schedule of administrative penalties for violations that are subject to a penalty to ensure that the penalty amount is appropriate to the violation. It further provides that the state fire marshal may impose an administrative penalty. The new administrative penalties schedule in §34.1302(a) - (c) and (f) enables SFMO to enforce violations of address update requirements through a citation without the need to refer the matter to TDI Enforcement.

Descriptions of the proposed amendments follow.

**Section 34.515.** Amendments to §34.515 add the change-of-address request fee as \$0 and renumber paragraphs as appropriate to reflect the addition. A proposed change removes unnecessary language concerning potential ways online payments could be accepted.

**Section 34.614.** Amendments to §34.614 add the change-of-address request fee as \$0 and renumber paragraphs as appropriate to reflect the addition. Amendments also make nonsubstantive grammatical changes for readability and add an Insurance Code citation. A proposed change removes unnecessary language concerning potential ways online payments could be accepted.

**Section 34.714.** Amendments to §34.714 add the change-of-address request fee as \$0 and renumber paragraphs as appropriate to reflect the addition. Amendments also make nonsubstantive grammatical changes for readability. A proposed change removes unnecessary language concerning potential ways online payments could be accepted.

**Section 34.814.** Amendments to §34.814(a) revise the text addressing fee payment for consistency with other sections and remove language addressing retail firework permits and the option to pay by cash. Amendments in §34.814(b) remove text stating that fees must be paid at the State Fire Marshal's Office or an address it specifies. Changes in §34.814(c) make non-substantive grammatical corrections. Revisions in §34.814(d) include the addition of subsection (d)(12) for the change-of-address request fee of \$0 and subsection (d)(13), which states that the fee for duplicate or revised certificates or licenses and other requested changes to certificates or licenses is \$20.

This addition looks new to the section, but a \$20 fee has always been collected for both duplicate license and license changes. This fee has historically been collected under Occupations Code §2154.104. The updated rule text of §34.814 accurately reflects the historical practice; it does not change it. The rule change brings the \$20 fee charged under the Occupations Code into the text of §34.814, which governs all the other fees. The change is made for simplicity and clarity.

An amendment also corrects capitalization in subsection (d)(11) and amendments to subsection (e) improve clarity and readability.

Section 34.1302. Amendments to the tables in Figure: 28 TAC §34.1302(a), Figure: 28 TAC §34.1302(b), Figure: 28 TAC §34.1302(c), and Figure: 28 TAC §34.1302(f) add a new penalty of \$250 for failure to revise or change an address within the required 14 days for the Fire Extinguisher Penalty Schedule, Fire Alarm Penalty Schedule, Fire Protection Sprinkler Penalty Schedule, and Fireworks Distributor Licensing Retailer Permit Penalty. Nonsubstantive amendments also add "is" to each table's introductory text.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda Villarreal, director of the State Fire Marshal's Office, 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 proposed amendments, other than that imposed by statute. Ms. Villarreal made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Villarreal does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Villarreal expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules promote efficiency and accuracy in the program. Ms. Villarreal expects that the proposed amendments will decrease costs for change of address and will impose a fee on noncompliant licensees.

Insurance Code §§6001.055(c), 6002.054(c), and 6003.055(c) require that the commissioner set a fee not to exceed \$20 (§6001.055(c), §6002.054(c)) or \$70 (§6003.055(c)) for any request for changes to a certificate of registration, license, or permit. Occupations Code §2154.104 provides that a person must be charged a fee in an amount not to exceed \$20 for a duplicate of or any requested change to a license. The proposed amendments to §§34.515, 34.614, 34.714, and 34.814 reduce those fees to \$0 for a change of address. Online payment may require a service fee, but other payment options are available.

A \$20 fee has been collected for both duplicate license requests and license changes. The fee is collected under the authority of Occupations Code §2154.104. The proposed rule text in §34.814 reflects current practice; it does not change it. The amendment adds the \$20 fee currently imposed by SFMO on regulated persons under the Occupations Code into the text of §34.814. This proposed amendment aligns the rule text with current agency practice and makes consistent the fee provisions in the sections included in this proposal.

Proposed amendments to the administrative penalty schedule in §34.1302(a) - (c) and (f) set an administrative penalty of \$250 for failure to revise or change an address within the required 14 days of change as provided under §§34.510 - 34.512, 34.610, 34.611, 34.710, 34.711, and 34.810. Whether a licensee is required to pay an administrative penalty depends on the licensee's compliance with the current applicable regulations. The amended penalty schedules may result in some costs to noncompliant licensees for fire alarm, fire extinguisher, fire sprinkler, and firework firms, but they will be limited to costs relating to (1) responding to the alleged violation, and (2) the administrative penalty paid.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will have little to no economic effect on small or micro businesses or rural communities. The proposed license fees will not impact businesses. The fees are applicable only to licensees.

The proposed amendments to the administrative penalty schedule in §34.1302 are important to better protect the health and safety of the public. There are no regulatory alternatives to the adoption of the penalty matrix in this proposal that will sufficiently protect the health and safety of Texas citizens affected by the rules. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this rule proposal to amend the address fee from \$20 to \$0 will reduce costs for licensed individuals and certificate holders. The addition of the \$20 fee in §34.814 does not impose a cost on regulated persons because SFMO has collected the fee under Occupations Code §2154.104. The inclusion of the fee in rule text reflects current agency practice and is consistent with other fees in this rule sections. There is no new cost. The proposed amendments allow SFMO to more efficiently regulate the industry, which is necessary to protect the health, safety, and welfare of the residents of this state.

While not a standard fee, a \$250 penalty is proposed for those who are not in compliance with the address change rule. TDI expects the cost to be zero for the vast majority of licensees; the penalty would only be applicable in the discretion of the licensee. In the event the licensee has violated the rule, then a penalty is appropriate. Enforcing the penalty is necessary for the health, safety and welfare of the citizens of Texas. Because of this, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed 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 require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand 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.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 20, 2025. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 20, 2025. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

## SUBCHAPTER E. FIRE EXTINGUISHER RULES

### 28 TAC §34.515

STATUTORY AUTHORITY. TDI proposes amendments to §34.515 under Government Code §417.005 and Insurance Code §6001.055(c) and §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of duties for the commissioner.

Insurance Code §6001.055(c) provides that the commissioner set a fee not to exceed \$20 for duplicate or changed fire extinguisher licenses and certificates.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.515 implements Insurance Code §6001.055.

#### §34.515. Fees.

(a) Except for fees specified in subsection (d) of this section, all fees payable must be submitted by cashier's check or money order made payable to the Texas Department of Insurance [~~or the State Fire Marshal's Office,~~] or by online payment. [~~Should the department authorize other online or electronic original applications or other transactions, applicants must submit fees with the transaction as directed by the department, the Texas OnLine Authority, or other online provider.~~] Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable.

(b) Fees are as follows.

(1) Certificates of registration:

(A) initial fee--\$450;

(B) renewal fee (for two years)--\$600;

(C) renewal late fee (expired 1 day to 90 days)--\$225 plus \$50 for each branch office operated by the registered firm;

(D) renewal late fee (expired 91 days to two years)--\$450 plus \$100 for each branch office operated by the registered firm;

(E) branch office initial fee--\$100;

(F) branch office renewal fee (for two years)--\$200.

(2) Certificate of registration (Type C):

(A) initial fee--\$250;

(B) renewal fee (for two years)--\$300;

(C) renewal late fee (expired 1 day to 90 days)--\$125;

(D) renewal late fee (expired 91 days to two years)--

\$250.

(3) Fire extinguisher license (Type A, B, and K):

(A) initial fee--\$70;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$35;

(D) renewal late fee (expired 91 days to two years)--

\$70.

(4) Fire extinguisher license (Type PL):

(A) initial fee--\$70;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$35;

(D) renewal late fee (expired 91 days to two years)--

\$70.

(5) Apprentice permit fee--\$30.

(6) Change of address request--\$0.

(7) [~~(6)~~] Duplicate or revised certificates, licenses, permits, or other requested changes to certificates, licenses, or permits--\$20.

(8) [~~(7)~~] Initial test fee (if administered by the SFMO)--\$20.

(9) [~~(8)~~] Retest fee (if administered by the SFMO)--\$20.

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license.

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

Filed with the Office of the Secretary of State on December 3, 2024.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## SUBCHAPTER F. FIRE ALARM RULES

### 28 TAC §34.614

STATUTORY AUTHORITY. TDI proposes amendments to §34.614 under Government Code §417.005 and Insurance Code §6002.054(c) and §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of duties for the commissioner.

Insurance Code §6002.054(c) provides that the commissioner set a fee not to exceed \$20 for duplicate or changed fire alarm licenses and certificates.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.614 implements Insurance Code §6002.054.

*§34.614. Fees.*

(a) Except for fees specified in subsection (c) of this section, all fees payable must be submitted by cashier's check or money order made payable to the Texas Department of Insurance [or the State Fire Marshal's Office,] or by online payment. [Should the department authorize other online or electronic original applications or other transactions, persons must submit fees with the transaction as directed by the department, the Texas OnLine Authority, or other online provider.] Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable.

(b) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(c) Fees are as follows:

(1) Certificates of registration:

(A) initial fee--\$500;

(B) renewal fee (for two years, subject to the exceptions specified in §34.610(i) of this subchapter (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches)--\$1,000;

(C) renewal late fee (expired 1 day to 90 days)--\$125 plus \$37.50 for each branch office operated by the registered firm;

(D) renewal late fee (expired 91 days to two years)--\$500 plus \$150 for each branch office operated by the registered firm;

(E) branch office initial fee--\$150;

(F) branch office renewal fee (for two years)--\$300;

(2) Certificates of registration--Single Station:

(A) initial fee--\$250;

(B) renewal fee (for two years)--\$500;

(C) renewal late fee (expired 1 day to 90 days)--\$62.50;

(D) renewal late fee (expired 91 days to two years)--\$250;

(E) branch office initial fee--None;

(F) branch office renewal fee (for two years)--None;

(3) Fire alarm licenses (fire alarm technician license, fire alarm monitoring technician license, residential fire alarm superintendent (single station) license; residential fire alarm superintendent license, fire alarm planning superintendent license):

(A) initial fee--\$120;

(B) renewal fee (for two years)--\$200;

(C) renewal late fee (expired 1 day to 90 days)--\$30;

(D) renewal late fee (expired 91 days to two years)--\$120;

(4) Residential fire alarm technician licenses:

(A) initial fee (for one year)--\$50;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$12.50;

(D) renewal late fee (expired 91 days to two years)--\$50;

(5) Training school approval:

(A) initial fee (for one year)--\$500;

(B) renewal fee (for one year)--\$500;

(6) Instructor approval:

(A) initial fee (for one year)--\$50;

(B) renewal fee (for one year)--\$50;

(7) Change of address request--\$0;

(8) [~~7~~] Duplicate or revised certificates, [~~certificate~~] approvals, or licenses, [~~license~~] or other requested changes to certificates, approvals, or licenses--\$20;

(9) [~~8~~] Initial test fee (if administered by the State Fire Marshal's Office)--\$20;

(10) [~~9~~] Retest fee (if administered by the State Fire Marshal's Office)--\$20.

(d) All fees are forfeited if the applicant does not appear for the scheduled test.

(e) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license except as provided in the Insurance Code §6002.203(g).

(f) Fees for certificates and licenses that have expired for less than two years include both renewal and late fees.

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

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Jessica Barta

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For further information, please call: (512) 676-6555



## SUBCHAPTER G. FIRE SPRINKLER RULES

### 28 TAC §34.714

STATUTORY AUTHORITY. TDI proposes amendments to §34.714 under Government Code §417.005 and Insurance Code §6003.055(c) and §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of duties for the commissioner.

Insurance Code §6003.055(c) provides that the commissioner set a fee not to exceed \$70 for duplicate or changed fire sprinkler licenses and certificates.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.714 implements Insurance Code §6003.055.

§34.714. Fees.

(a) Except for fees specified in subsection (b) of this section, all fees payable must be submitted by cashier's check or money order made payable to the Texas Department of Insurance [or the State Fire Marshal's Office,] or by online payment. [Should the department authorize other online or electronic original applications or other transactions, applicants must submit fees with the transaction as directed by the department, the Texas OnLine Authority, or other online provider.] Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable and nontransferable [~~non-transferable~~].

(b) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(c) Fees are as follows:

(1) Certificates of registration:

- (A) all initial applications must include an application fee of--\$50;
- (B) initial fee--\$900;
- (C) renewal fee (for two years)--\$1,800;
- (D) renewal late fee (expired 1 day to 90 days)--\$450;
- (E) renewal late fee (expired 91 days to two years)--\$900;

(2) Certificates of registration--(Dwelling or Underground fire main):

- (A) all initial applications must include an application fee of--\$50;
- (B) initial fee--\$300;
- (C) renewal fee (for two years)--\$600;
- (D) renewal late fee (expired 1 day to 90 days)--\$150;
- (E) renewal late fee (expired 91 days to two years)--\$300;

(3) Responsible managing employee license (General):

- (A) initial fee--\$200;
- (B) renewal fee (for two years)--\$350;
- (C) renewal late fee (expired 1 day to 90 days)--\$100;
- (D) renewal late fee (expired 91 days to two years)--\$200;

(4) Responsible managing employee licenses (Dwelling, or Underground fire main):

- (A) initial fee--\$150;
  - (B) renewal fee (for two years)--\$200;
  - (C) renewal late fee (expired 1 day to 90 days)--\$75;
  - (D) renewal late fee (expired 91 days to two years)--\$150;
- (5) Responsible managing employee license (General Inspector):
- (A) initial fee--\$50;
  - (B) renewal fee (for two years)--\$100;
  - (C) renewal late fee (expired 1 day to 90 days)--\$25;
  - (D) renewal late fee (expired 91 days to two years)--\$50;

(6) Change of address request--\$0;

(7) [(6)] Duplicate or revised certificates [~~certificate~~] or licenses, [~~license~~] or other requested changes to certificates or licenses--\$35;

(8) [(7)] Test fee (if administered by the State Fire Marshal's Office)--\$50.

(d) Late fees are required of all certificate or license holders who fail to submit renewal applications before their expiration dates.

(e) A license or registration expires at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will have 30 days from the time the applicant is notified by the State Fire Marshal's Office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(f) Holders of certificates and licenses that have been expired for less than two years cannot be issued new certificates or licenses.

(g) Fees for certificates and licenses that have been expired for less than two years include both renewal and late fees.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**

**28 TAC §34.814**

STATUTORY AUTHORITY. TDI proposes amendments to §34.814 under Government Code §417.005, Occupations Code §2154.104, and Insurance Code §36.001 and §36.002.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of duties for the commissioner.

Occupations Code §2154.104 provides that a person must be charged a fee in an amount not to exceed \$20 for duplicate license issued by the commissioner and for any requested change to a license.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are appropriate to accomplish the purposes of Occupations Code Chapter 2154.

CROSS-REFERENCE TO STATUTE. Section 34.814 implements Occupations Code §2154.104.

*§34.814. Fees.*

(a) All fees payable must be submitted by cashier's check or money order made payable to the Texas Department of Insurance or by online payment. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable. [Fees payable to the department and required by the Occupations Code Chapter 2154 and this subchapter, must be paid by cash, money order, check, or by online payment. Money orders and checks must be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, or credits for unused retail fireworks permits, all fees are nonrefundable.]

(b) [Fees payable to the department must be paid at the Office of the State Fire Marshal in Austin or mailed to an address specified by the state fire marshal.] Retail permits may [also] be obtained through participating licensed firms. See §34.815 of this title (relating to Retail Permits).

(c) Fees for tests administered by an outsourced [outsourced] testing service are payable to the testing service in the amount and manner the service requires. [required by the testing service.]

(d) Fees are as follows:

(1) manufacturer license:

- (A) initial fee--\$1,000;
- (B) renewal fee (before expiration)--\$1,000;
- (C) renewal late fee (expired 1 day to 90 days)--\$500;
- (D) renewal late fee (expired 91 days to two years)--

\$1,000;

(2) distributor license:

- (A) initial fee--\$1,500;
- (B) renewal fee (before expiration)--\$1,500;
- (C) renewal late fee (expired 1 day to 90 days)--\$750;
- (D) renewal late fee (expired 91 days to two years)--

\$1,500;

(3) jobber license:

- (A) initial fee--\$1,000;

(B) renewal fee (before expiration)--\$1,000;

(C) renewal late fee (expired 1 day to 90 days)--\$500;

(D) renewal late fee (expired 91 days to two years)--\$1,000;

(4) pyrotechnic special effects operator license:

(A) initial fee--\$45;

(B) renewal fee (before expiration)--\$25;

(C) renewal late fee (expired 1 day to 90 days)--\$22.50;

(D) renewal late fee (expired 91 days to two years)--

\$45;

(5) pyrotechnic operator license:

(A) initial fee--\$45;

(B) renewal fee (before expiration)--\$25;

(C) renewal late fee (expired 1 day to 90 days)--\$22.50;

(D) renewal late fee (expired 91 days to two years)--

\$45;

(6) multiple public display permit:

(A) initial fee--\$400;

(B) renewal fee (before expiration)--\$400;

(7) retail permit--\$20;

(8) single public display permit--\$50;

(9) agricultural, industrial, and wildlife control permits--\$10;

(10) flame effects operator:

(A) initial fee--\$45;

(B) renewal fee (before expiration)--\$25;

(C) renewal late fee (expired 1 day to 90 days)--\$22.50;

(D) renewal late fee (expired 91 days to two years)--

\$45;

(11) test [Tests] administered by the State Fire Marshal's Office:

(A) initial test fee--\$20;

(B) retest fee--\$20;[-]

(12) change of address request--\$0;

(13) duplicate or revised permits or licenses, or other requested changes to permits or licenses--\$20.

(e) A renewal application for a license must be accompanied by the renewal fee and may be paid either online or by mail. The renewal application and fee must be submitted before the license's expiration date. A renewal application or payment by mail must be postmarked before the date the license expires. Renewal applications postmarked after the license expiration date must be accompanied by both the renewal fee and the appropriate late fee. [A renewal application for a license accompanied by the renewal fee deposited with the United States Postal Service is deemed to be timely filed when its envelope bears a legible postmark on or before the expiration date of the license being renewed. Any renewal application postmarked after the expiration date must be accompanied by the renewal fee and the appropriate late fee.]

(f) Holders of certificates and licenses that have been expired for less than two years cannot be issued new certificates or licenses.

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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General Counsel

Texas Department of Insurance

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## SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES

### 28 TAC §34.1302

STATUTORY AUTHORITY. TDI proposes amendments to §34.1302 under Government Code §417.005 and §417.010, and Insurance Code §36.001 and §36.002.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of duties for the commissioner.

Government Code §417.010 requires the commissioner to adopt by rule a schedule of administrative penalties for violations subject to a penalty under §417.010 to ensure that the amount of an administrative penalty imposed is appropriate to the violation, and it provides that the state fire marshal may impose an administrative penalty without referring the violation to TDI for commissioner action.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are appropriate to accomplish the purposes of Occupations Code Chapter 2154.

CROSS-REFERENCE TO STATUTE. Section 34.1302 implements Government Code §417.005 and §417.010.

§34.1302. *Schedule of Administrative Penalties.*

(a) The Fire Extinguisher Penalty Schedule is specified as follows.

Figure: 28 TAC §34.1302(a)

[Figure: 28 TAC §34.1302(a)]

(b) The Fire Alarm Penalty Schedule is specified as follows.

Figure: 28 TAC §34.1302(b)

[Figure: 28 TAC §34.1302(b)]

(c) The Fire Protection Sprinkler Penalty Schedule is specified as follows.

Figure: 28 TAC §34.1302(c)

[Figure: 28 TAC §34.1302(e)]

(d) The Fireworks Indoor Retail Stand Penalty Schedule is specified as follows.

Figure: 28 TAC §34.1302(d) (No change.)

(e) The Fireworks Retail Site Penalty Schedule is specified as follows.

Figure: 28 TAC §34.1302(e) (No change.)

(f) The Fireworks Distributor Licensing Retailer Permit Penalty is specified as follows.

Figure: 28 TAC §34.1302(f)

[Figure: 28 TAC §34.1302(f)]

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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Jessica Barta

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Texas Department of Insurance

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

##### SUBCHAPTER A. FEES

##### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

###### 31 TAC §53.10

The Texas Parks and Wildlife Department proposes an amendment to §53.10, concerning Public Hunting and Fishing Permits and Fees.

The proposed amendment would implement a conforming change to terminology with respect to references to pronghorn antelope. In 2022, the department amended 31 TAC §65.3, concerning Definitions, to define "pronghorn" as "pronghorn antelope (*Antilocarpa americana*)." Although Parks and Wildlife Code, Chapter 63, designates the "pronghorn antelope" as a game species, the animal is not in fact a true antelope. Additionally, it is less cumbersome to simply refer to the animal as a pronghorn. Therefore, the definition was changed and the department is addressing the term throughout the agency's rules as the opportunity arises.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed



are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be consistent terminology throughout agency rules.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule does not affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not limit, expand, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Robert Macdonald (512) 389-4775, email: robert.macdonalds@tpwd.texas.gov. Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

The amendment is proposed under the authority of Parks and Wildlife Code, §81.403, which authorizes the commission to establish a fee for a permit for the hunting of wildlife or for any other use in wildlife management areas.

The proposed amendment affects Parks and Wildlife Code, Chapter 81.

§53.10. *Public Hunting and Fishing Permits and Fees.*

(a) (No change.)

(b) Special and regular permits. The following permit fee amounts apply only to persons 17 years of age and older:

(1) special permits.

(A) standard period for deer, exotic mammal, pronghorn [antelope], javelina, turkey, coyote, alligator--\$80;

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

(2) (No change.)

(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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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## CHAPTER 57. FISHERIES

### SUBCHAPTER E. PERMITS TO POSSESS OR SELL NONGAME AND EXOTIC FISH TAKEN FROM PUBLIC FRESH WATER

#### 31 TAC §§57.377 - 57.379, 57.381, 57.382, 57.384

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§57.377 - 57.379, 57.381, 57.382, and 57.384, concerning Permits to Possess or Sell Nongame Fish Taken from Public Fresh Water. The proposed amendments would add selected exotic species of fish to the list of species for which the department may issue permits authorizing take from public waters for commercial purposes, remove several species from that list, retitle the subchapter accordingly, and make clarifying and housekeeping-type changes to improve accuracy and readability.

The proposed amendment to §57.377, concerning Definitions, would add language to clarify that the rules include and are applicable to exotic species in addition to indigenous species. Under Parks and Wildlife Code, Chapter 61, the commission is authorized to regulate the take and possession of aquatic animal life from public fresh water. Parks and Wildlife Code, Chapter 66, delegates to the commission the authority to designate nonindigenous (exotic) species of fish as harmful or potentially harmful exotic aquatic species and regulate their importation, possession, and sale. Under Parks and Wildlife Code, Chapter 67, the department is delegated the authority to manage all indigenous species of fish not designated by rule as game fish (i.e., nongame fish) if necessary to properly manage the species.

The proposed amendment is intended to eliminate possible confusion, and is made throughout this rulemaking.

The proposed amendment to §57.378, concerning Applicability: Nongame Fishes, would retitle the section to be generic with respect to the effect of the subchapter, add silver carp and suckermouth armored catfish to the list of species for which a permit may be issued for commercial take, remove freshwater drum, Rio Grande cichlid, and minnows from the list, and add a clarifying statement that no permit under Chapter 57, Subchapter A (Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants) is required for an activity authorized under a permit issued under Subchapter E. The proposed amendment also replaces the current graphic list of affected species with a list that conforms to the conventional rule format.

Silver carp are native to eastern Asia and were introduced to private fish farms and wastewater treatment facilities in the United States during the 1970s and 1980s as a biological control agent to reduce algae growth and improve water-quality conditions in ponds. By 1980, they had escaped into the Mississippi River system during high-water flooding events and subsequently spread rapidly throughout the Mississippi River drainage. They have become established and potentially problematic in more than ten states, where they compete with native species and pose hazards to boaters because they can weigh up to 60 pounds and are capable of leaping out of the water when startled such as by boat noise, sometimes striking boaters. Silver carp are now well-documented in the Red River and all its Texas tributaries below Lake Texoma but are not yet highly abundant. There are U.S. and international markets for wild-caught silver carp and regional efforts underway to incentivize harvest and the proposed amendment would allow their commercial sale. The proposed amendment is intended to encourage removal of this species from Texas fresh waters with the additional benefit of commercial incentive.

Suckermouth armored catfish are native to Central and South America and were imported to the U.S. via the aquarium trade to control algae. Aquarists have been known to dump the contents of fish tanks for various reasons, which is believed to have resulted in the introduction of this species to Texas waters where high abundance has been documented in some locations. This species competes with indigenous fishes, inadvertently consumes the eggs of other fishes through its feeding behavior, and may cause serious disruptions in food webs and native ecosystems. They are especially problematic in spring-influenced river systems such as those found in the Edwards Plateau of Texas but are also widespread in the Houston and South Texas regions. Additionally, their burrowing behavior causes destabilization and erosion in riverbanks, earthen retention structures, and under concrete retention structures, with resulting potential for economic damage. There has been commercial interest in this species from pet food producers. The proposed amendment is intended to encourage removal of this species from Texas fresh waters with the additional benefit of a commercial incentive.

Freshwater drum are indigenous to Texas and are recreationally and ecologically important. The species serves as a reproductive host for numerous species of native freshwater mussels, many of which are threatened, endangered, or recognized as species in need of conservation intervention. The department has determined that continued commercial harvest of freshwater drum is inconsistent with conservation and recovery goals for imperiled freshwater mussels; therefore, the proposed amend-

ment would remove the species from the list of species for which a permit under the subchapter could be issued.

Similarly, the proposed amendment would remove minnows from the list of species for which a permit under the subchapter is authorized. The department has determined that 64 percent of the minnow genera currently authorized for commercial harvest in Texas include species that are threatened, endangered, or species of greatest conservation need-imperiled species in total. Because of their small size and similarity of appearance, the department believes it is prudent to prohibit all commercial harvest in order to ensure the ability of all minnow species to perpetuate themselves, as well as to forestall or prevent additional state or federal listings as threatened or endangered species.

Finally, the proposed amendment would remove the Rio Grande cichlid from the list of species authorized for commercial harvest. The Rio Grande cichlid is native to Texas and is the only indigenous cichlid native to the U.S. Known to be a vigorous fighter, it has become increasingly popular as a sport fish, particularly among fly fishers. Commercial take has become almost non-existent and the department believes that removing it from the list aligns with recreational fisheries management goals, especially for Central Texas creeks and rivers where sport fishing guides offer trips targeting the species.

The proposed amendment to §57.382, concerning Harvest and Sales Reports, would eliminate the current contents of the section other than the requirement to retain sales receipts and insert a reference to the requirements of §57.993, concerning Commercial Harvest Report. Under the provisions of §57.993, all persons who engage in commercial harvest activities are required to report those activities to the department; therefore, the requirements of current paragraphs (1) and (2) of §57.382 are unnecessary, since that data is already captured. Therefore, the contents of current paragraph (1) and (2) can be replaced with a simple reference to the reports required under §57.993.

The proposed amendment to §57.384, concerning Refusal to Issue, would eliminate current paragraph (4), which is no longer necessary. In 2022, the department promulgated Chapter 56 to comply with recommendations of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. The Sunset Commission also recommended a similar process for agency decisions to suspend or revoke such licenses and permits. The permit established by this subchapter is subject to the provisions of Chapter 56; thus, paragraph (4) is no longer necessary. The proposed amendment would retitle the section accordingly to reflect the content of the section.

The proposed amendments to §57.379, concerning Prohibited Acts, §57.381, concerning Permit Specifications and Requirements, and §57.382, concerning Harvest and Sales Reports, would make conforming changes as discussed earlier to reflect the applicability of the rules to all species of fish taken from public waters for commercial purposes.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public bene-

fit anticipated as a result of enforcing or administering the proposed rules will be the discharge of the agency's statutory duty to manage and conserve aquatic resources for the enjoyment of present and future generations.

There could be adverse economic effects on persons required to comply with the rules, primarily associated with the removal of minnows, freshwater drum, and Rio Grande cichlid from the list of species that may be taken commercially. Those economic effects are addressed elsewhere in this preamble in the discussion of potential impacts to small businesses and microbusinesses. The department notes that there also could be positive economic effects as a result of the rules, as the proposed amendments, if adopted, would make two additional species of fish available for commercial harvest under a permit.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rules could result in direct economic effects on small businesses and microbusinesses.

Between 2014 and 2023, ten permittees authorized to commercially harvest freshwater drum reported total commercial sales of \$5,911. The permittee reporting the highest sales over the ten-year period reported total sales of \$1,800. For the purposes of this analysis, the department estimates that the worst-case scenario for any permittee would be a sales loss of approximately \$180 dollars per year or less.

Department records indicate only two permittees reported commercial harvest of Rio Grande cichlid between 2014 and 2023, with a total sales value of \$423. No commercial harvest has been reported since 2020. For the purposes of this analysis, the department estimates that if the rules as proposed are adopted, the worst-case scenario for any permittee would be a sales loss of less than \$50 per year.

Department records indicate that eight persons are permitted to commercially harvest minnows; however, there are no reported sales since 2017 and less than \$100 in sales reported between 2014 and 2017. For the purposes of this analysis, the department estimates that if the rules as proposed are adopted, the worst-case scenario for any permittee would be a sales loss of less than \$50 per year.

The department considered several alternatives to the rules as proposed.

The first alternative considered was to maintain status quo. This alternative was rejected because the removal of freshwater drum, minnows, and Rio Grande cichlid is intended to achieve

conservation and management objectives that would otherwise be frustrated.

A second alternative considered was to establish seasons and bag limits for the commercial take of the freshwater drum, minnows, and Rio Grande cichlid. This alternative was rejected because the benefits of such an approach would not be cost-effective in light of having to tailor seasons and bag limits for a variety of locations that might or might not be targeted for commercial exploitation, especially in light of the very low commercial activity levels reported.

The department has determined that the rules will not result in economic effects on rural communities, as the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation, but will modify an existing regulation by removing three categories of fish from the list of species that may be commercially harvested under a department permit and adding two species of fish to that list; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Michael Tennant, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8754; email: Michael.Tennant@tpwd.texas.gov or via the department website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The amendments are proposed under Parks and Wildlife Code, Chapter 61, which authorizes the commission to regulate take and possession of aquatic animal life and the means, methods, and places in which it is lawful to take or possess aquatic animal life (including public fresh water); Chapter 66, Subchapter A, which authorizes the department to make rules governing the importation, possession, and sale of exotic harmful or potentially harmful fish; and Chapter 67, which authorizes the commission to establish any limitation of the take, possession, propagation, transportation importation, exportation, sale, and offering for sale of nongame fish necessary to manage those species,

The proposed amendments affect Parks and Wildlife Code, Chapters 61, 66, and 67.

#### §57.377. *Definitions.*

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

(1) Affected species--For purposes of this subchapter, all nongame fish and exotic fish listed in §57.378 of this title (relating to Applicability; Affected Species).

(2) [(4)] Department--The Texas Parks and Wildlife Department or any authorized employee thereof.

(3) Exotic fish--As defined in Parks and Wildlife Code §66.007.

(4) [(2)] Game fish--As defined in §57.971(15)(A) of this title (relating to Definitions).

(5) [(3)] Nongame fish--For the purposes of this subchapter, all indigenous or native [All] species not defined as game fish, except endangered and threatened fish, which are defined and regulated under Chapter 65, Subchapter G of this title (relating to Threatened and Endangered Nongame Species).

(6) [(4)] Public freshwater--All of the state rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those freshwaters not defined as coastal waters in §57.971 of this title (relating to Definitions), where public access is available without discrimination.

(7) [(5)] Shad--Gizzard and threadfin shad (*Dorosoma* spp.).

§57.378. Applicability: Affected Species [Nongame Fishes].

(a) Nongame Species. A permit to sell the following species of [nongame] fish taken from public fresh water may be issued if the department determines that it [the sale] is necessary to properly manage the species.

[Figure: 34 TAC §57.378]

(1) Gars (*Lepisosteus* spp. and *Atractosteus* spp.);

(2) Bowfin (*Amia calva*);

(3) Shads (*Dorosoma* spp.);

(4) Common carp (*Cyprinus carpio*);

(5) Suckers (buffalo) (*Ictiobus* spp);

(6) River carpsucker (*Carpiodes carpio*);

(7) Bullhead catfishes (*Ameiurus* spp.);

(8) Silversides (*Menidia beryllina* and *Membras Martinica*); and

(9) Mullet (*Mugil* spp.).

(b) Exotic fish. A permit to sell the following species of fish taken from public fresh water may be issued if the department determines that it will encourage the removal of undesirable species.

(1) Goldfish (*Carassius auratus*);

(2) Grass carp (*Ctenopharyngodon Idella*);

(3) Bighead carp (*Hypophthalmichthys nobilis*);

(4) Tilapia (*Oreochromis* spp.);

(5) Silver carp (*Hypophthalmichthys molitrix*); and

(6) Suckermouth armored catfishes (*Hypostomus* spp. and *Pterigoplichthys* spp.).

(c) Hybrids among species listed in subsection (a) of this section may be sold under a permit issued under this subchapter authorizing the take of at least one of the species.

(d) No permit under Chapter 57, Subchapter A, of this chapter is required for an activity authorized under a permit issued under

this subchapter; however, all controlled exotic species taken under this subchapter shall be subject to the provisions of §57.113(e) of this title (relating to General Provisions and Exceptions).

§57.379. Prohibited Acts.

Except as provided by this subchapter it is unlawful for any person to:

(1) sell or offer for sale a [nongame] fish of the species listed in §57.378 of this title (relating to Applicability: Affected Species [Nongame Fishes]) taken from the public fresh water of the state, unless the person:

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

(2) (No change.)

(3) to retain or possess any species of [game fish or nongame] fish not listed in a valid permit while engaged in activities authorized by the permit;

(4) to fail to immediately return to the water any species of fish not listed in the permit caught while engaged in activities authorized by the permit; or

(5) (No change.)

§57.381. Permit Specifications and Requirements.

(a) A permit issued under this subchapter shall specify:

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

(3) the [nongame] fish species for which take and/or sale is allowed; and

(4) the types and number of devices that are lawful for use in permitted activities [which may be used to take nongame fish].

(b) - (h) (No change.)

§57.382. Reporting and Recordkeeping [Harvest and Sales Reports].

(a) Permittee shall comply with the provisions of §57.993 of this title (relating to Commercial Harvest Report) [Annual harvest and sales reports must be submitted by the permittee to the department on forms provided by the department].

[(1) Annual reports must be received by the department on or before the 10th day of January each year.]

[(2) Reports must include for each species taken:]

[(A) species name;]

[(B) number of individuals;]

[(C) number of pounds;]

[(D) means and methods used to take each species;]

[(E) water body from which each species was taken;

and]

[(F) price received, per pound, of each species sold.]

(b) [(3)] Permittee must maintain sales receipts for all [nongame] fish sold for a period of one year from date of sale, and these receipts must be available for examination by authorized employees of the department.

§57.384. Special Conditions [Refusal to Issue].

The department may refuse to authorize any prospective activity on any water body or impose restrictions on permitted species, water bodies, devices, or live transfer if the department determines that the prospective take:

(1) [the prospective take of nongame fish] is detrimental to the target species, species listed as endangered or threatened, or any other aquatic species;

(2) [the prospective take of nongame fish] is likely to increase the risk of transfer or spread of harmful or potentially harmful exotic fish or shellfish; or

(3) [the prospective take of nongame fish] cannot be accomplished in a manner consistent with the management goals and objectives of the department.[;]

{(4) the applicant or assistant(s) seeking renewal is not in compliance with provisions of this subchapter.}

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

Filed with the Office of the Secretary of State on December 9, 2024.

TRD-202405907

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 19, 2025

For further information, please call: (512) 389-4775



## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

### SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

#### 31 TAC §58.11, §58.30

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §58.11 and §58.30, concerning the Statewide Oyster Fishery Proclamation. The proposed amendments are necessary as a result of the passage of Senate Bill (S.B.) 1032 by the 88th Texas Legislature (2023), which requires the commission to create a program by rule to manage the restoration of natural oyster beds. Although the provisions of S.B. 1032 direct the creation of a new program for the issuance of Certificates of Location (CoLs) for restoration purposes, because the department already administers a program that issues CoLs for harvest purposes under the same rules, the practical effect of the proposed amendments can best be thought of as the adaptation of current program rules for an additional purpose required by statute.

Under Parks and Wildlife Code, Subchapter A, the department may "subject a natural oyster bed to location," which then allows the department to issue a CoL that authorizes the planting of oysters to create a private oyster bed, which may then be harvested. The provisions of S.B. 1032 require the commission to establish by rule a program for the restoration of natural oyster beds, delegating authority to the commission to establish fees, application requirements, location terms, renewal procedures, total area in each bay system to be occupied, siting and marking requirement, and any other requirements necessary to administer the program. The proposed amendments would implement such a program, make alterations where necessary to eliminate redundant, unnecessary, or obsolete language, and prevent conflicts

with existing provisions applicable to CoLs issued for purposes of harvest.

In addition to elements that implement specific provisions regarding program implementation, the proposed amendments restate statutory language of S.B. 1032 where appropriate or necessary. The department notes that statutory provisions already have the force and effect of law and need not be repeated; however, they are repeated here simply for ease of reference.

The proposed amendment to §58.11, concerning Definitions, would alter paragraph (3) to include the planting of cultch in the definition of "Certificate of Location," which is necessary to reflect the fact that the provisions of S.B. 1032 mandate a mechanism for the issuance of CoLs for restoration purposes. The proposed amendment also would add new paragraph (7) to define "cultch" as "substrate of appropriate size and composition for larval oyster attachments, such as shell, rock, or other non-toxic, department-approved material," which is necessary to establish an unambiguous meaning for a term employed in the rules. Finally, the proposed amendment would alter the definition of "natural oyster bed" in paragraph (14) to repeat the statutory definition of the term provided in Parks and Wildlife Code, §76.001.

The proposed amendment to §58.30, concerning Certificates of Location, would alter subsection (a)(1)(A) to reference the provisions of Parks and Wildlife Code, §76.003, as amended by S.B. 1032, which authorize the issuance of a CoL for degraded natural oyster beds. The proposed amendment also would remove current subsection (a)(1)(B), which is a repetition of a statutory provision that was included by S.B. 1032 and referenced in subsection (a)(1)(A).

The proposed amendment also would alter subsection (a)(2) to provide that the term of a CoL issued for purposes of harvest is 15 years, which is a repetition of the provisions of Parks and Wildlife Code, §76.018. The proposed amendment would add new subsection (a)(3) to establish a 15-year term for CoLs issued for purposes of conducting restoration activities. The 15-year term was selected for the sake of consistency because it mirrors the current term established by statute for CoLs issued for purposes of harvest.

Proposed new paragraph (5) would prohibit the harvest of oysters from CoLs issued for restoration purposes during the term of the CoL and subsequent renewals. The provision is necessary to ensure that restoration activities are the sole purpose for the CoL.

Proposed new paragraph (6) would prohibit the movement of oysters from an area for which a certificate of location has been issued, which is necessary to ensure that restoration CoLs are not used as propagation sites for commercial activities, but serve only to restore natural populations of oysters in situ.

Proposed new paragraph (7) would allow the department to authorize a locator to conduct non-harvest activities following any potentially damaging events, such as extreme weather, on areas otherwise closed by the Texas Department of State Health Services, provided the locator has obtained prior written permission from the department (TPWD). The provision is intended to allow locators, when feasible, to monitor and protect their investment in a CoL following potentially damaging phenomena.

The proposed amendment would retitle subsection (b) to reflect applicability to both types of CoLs. The proposed amendment would add new subsection (b)(2) to require the department to

designate the dates and times the department is accepting applications for certificates of location, and to make such information publicly available. The current rule conditions the payment of the application fee "if applications are being accepted by the department," which leaves unclear the question of when applications are in fact being accepted. The proposed alteration would clarify that issue. The contents of current paragraph (2) would be eliminated, as they are no longer necessary.

Current §58.30(b)(4) requires, as part of the application process for a certificate of location, a department inspection of a prospective site for purposes of evaluating its suitability for issuance of a certificate of location and enumerates a list of factors the department may consider. The proposed amendment would require a consultation with the department prior to submission of an application (rather than a site inspection), add two additional factors (sediment overburden, other habitats) to the list of factors to be considered by the department, and redesignate the paragraph as new paragraph (3). The department has determined that a preliminary consultation with the department is an effective method for making an initial determination of the feasibility of a prospective certificate of location. The two additional factors being added to the list of factors to be considered by the department (sediment overburden, other habitats) are necessary to allow the department to more thoroughly assess the suitability of a location for the issuance of a certificate of location. Since the department is charged with the conservation of all aquatic resources, the consideration of impacts of a prospective certificate of location on other habitats is prudent.

The proposed amendment would add new paragraph (4) to require an applicant for a CoL to identify which type of CoL is being sought (harvest or restoration), which is necessary because they are distinctly separate authorizations.

The proposed amendment to subsection (b) would alter current paragraph (3) to allow for issuance of certificates of location to domestic corporations. The department has determined that because the application process identifies specific individuals who agree in writing by signing the application to be held responsible for conduct regulated by the department, there is an avenue to hold a person accountable in the event that violations occur. The proposed amendment also would require the submission of cartographic data (a map and the corner coordinates) to assist the department in analyzing the suitability of a prospective CoL. The department believes it is important to unambiguously identify the precise location and dimensions of a prospective CoL to prevent possible confusion or misunderstandings regarding the locations where activities under a CoL are authorized. Additionally, the proposed amendment would require a placement plan, accompanied by relevant information concerning the nature or composition of cultch materials, the quantity of those materials, and a chronology for their deployment, all of which are important factors for the department to consider in determining the suitability of a project. The proposed amendment would also add new paragraph (6) to provide that the department will make a decision to deny an application or issue a CoL based on the totality of factors involved, including the suitability of the prospective project with respect to purpose and size. The provision is necessary to ensure that all applicable factors are considered in a decision to allow or deny a CoL. The contents of current paragraph (3)(D) would be reworded and relocated to subsection (d)(1)(A)(iii).

The proposed amendment to §58.30 would make several alterations in subsection (c) that affect the public hearing process on applications for a CoL. The proposed amendment would reword

paragraph (1) to make the provisions of the paragraph contingent on a department determination that all siting requirements of the subchapter and Parks and Wildlife Code, Chapter 76, have been met. The current provision is worded in such a fashion as to imply that such a determination will always occur, which is not the case. The reference to Parks and Wildlife Code, Chapter 76, is added for ease of reference. Subparagraph (A) would require the department to hold a public hearing to evaluate public input with respect to an application for a CoL, and eliminate language regarding recent fishing activities at the site that were included by the provisions of S.B. 1032. This broadens the stated purpose of the public hearing to allow for inclusion of any relevant concerns the public may have regarding the proposed CoL. Subparagraph (B) would require the department to provide notice of the public hearing required by subparagraph (A), and would replace the current requirement for newspaper publication with a requirement for publication on the department's official website and any other media outlet deemed appropriate. The proposed amendment also would reword subparagraph (D) and eliminate current subparagraph (E) to remove obsolete provisions and simply require the department, as part of the noticing process, to make information regarding an application for location publicly available, which is necessary to ensure that the public is aware of and given the opportunity to comment upon an application for a CoL. The amended provisions are generally necessary to reflect the wide availability and use of more contemporary communication channels.

The proposed amendment to §58.30 would alter subsection (d) to prescribe the responsibilities of persons the department has designated as locators of certificates of location. The proposed amendment would add new paragraphs (1) and (2) to address final approval by the department of an application for a CoL. Proposed new paragraph (1) would condition the final approval of an application for a CoL upon the submission by the applicant to the department of a map of the prospective location with respect to surrounding or nearby state-owned lands, the geographic coordinates of the location, and evidence to the department's satisfaction that the applicant has acquired all applicable state and federal permits and authorizations. Proposed new paragraph (2) would stipulate a department site inspection and verification of the geographic coordinates of the location. The proposed amendment would alter current provisions by adding language where appropriate and necessary to indicate requirements applicable to either or both types of CoLs, eliminate the contents of current paragraph (4) that require an applicant to have a prospective location surveyed by a registered surveyor, which would be relocated to new paragraph (8) and made applicable only to requests for boundary alterations. The proposed amendment would add new paragraph (4) to require the submission of amendments to a placement plan to be submitted to the department for review and would prohibit activities under an amended placement plan to take place until the department has approved. The provision is necessary to ensure that all activities under a CoL are consistent with the department's duties and obligations under the Parks and Wildlife Code. Similarly, proposed new paragraph (5) would establish project milestones and require restoration locators to notify the department at specified intervals as to a project's status. The proposed amendment would alter current paragraph (5) to specify that there are no rental fees for CoLs issued for restoration purposes, which the department has determined is appropriate because restoration activities provide a very high value in terms of ecosystem benefits. Additionally, the proposed amendment to subsection (d) would alter current paragraph (6) to remove current subpara-

graph (A)(i), which is no longer necessary, and add new clause (ii) to provide for the department to consider any additional factors necessary to inform a department determination to approve or deny a renewal request for a CoL. The proposed amendment also would add new paragraph (8) to establish a process for the alteration of boundaries of a CoL, which would consist of the locator having the location resurveyed by a registered surveyor and the submission to the department of survey notes and a map showing latitude and longitude coordinates for all corner markers, and its location in relation to surrounding or nearby state land tract boundaries. The provision is necessary to ensure that all activities under a CoL are consistent with the department's duties and obligations under the Parks and Wildlife Code.

Additionally, the proposed amendment would alter current subsection (d)(7) to exempt CoLs for purposes of restoration, which is necessary for reasons addressed earlier in this preamble.

Finally, the proposed amendment would make nonsubstantive grammatical changes to improve precision and clarity in current paragraph (8), concerning transfer or sale of CoLs and alter the title of the subsection to reflect applicability to both types of certificates of location issued by the department.

The department has coordinated and will coordinate with the Department of State Health Services and the General Land Office in the promulgation of the rules as proposed, as required by Parks and Wildlife Code, §76.022(d).

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal additional fiscal implications to state or local governments as a result of administering or enforcing the rules as proposed. While the department currently administers a CoL program for purposes of harvest, the rules as proposed would allow for the use of CoLs for restoration purposes. This may result in increased use of the CoL program overall and in bay systems where CoLs have not been authorized prior to this rulemaking; however, the department intends to administer and enforce the rules using existing staff and resources.

Mr. Geeslin also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the enhancement of oyster populations and the ecological benefits provided by oysters in public waters, including habitat provision, water filtration, erosion protection, and establishing a continual supply of oyster larvae to colonize oyster habitat within bay systems.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the proposed amendments would implement a statutory requirement for the commission to establish and administer a CoL program for restoration purposes and be-

cause the CoLs issued under the rules would be sited only on areas that no longer support commercial exploitation, the development of CoLs on these areas will not result in direct adverse economic impacts to any small business, micro-business, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will expand an existing regulation (by allowing for the use of CoLs for restoration purposes and modernizing the requirements of the CoL program in general); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules are in compliance with Natural Resources Code, §33.2051 (Agency Rulemaking Actions).

Comments on the proposed rules may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8255; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, §76.018 and §76.022, which requires the commission to establish by rule a program to issue certificates of location for the restoration of natural oyster bed, including rules to establish fees, application approval requirements, lease terms, and renewal procedures for leases, the total area in each bay system for which leases may be issued, siting and marking requirements for leases, and any other requirement necessary to administer the program; §76.033, which authorizes the department to make regulations to protect and conserve oysters on public reefs and beds; and §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

*§58.11. Definitions.*

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

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

(3) Certificate of Location--A department-issued certificate authorizing a person or domestic corporation to plant cultch and/or oysters in a specifically delineated area of the public water of the state for the purpose of establishing a private oyster bed.

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

(7) Cultch--Substrate of appropriate size and composition for larval oyster attachments, such as shell, rock, or other non-toxic department-approved material.

(8) [(7)] Department--The Texas Parks and Wildlife Department.

(9) [(8)] Director--The executive director of the department.

(10) [(9)] Harvester/Shell Recovery Tag--An identifying marker that must be affixed to the outside of each sack of oysters at the time of harvest, in the location of harvest, containing information required by the TDSHS under the NSSP, and remain affixed during transportation of the oysters to a dealer.

(11) [(10)] Location--The acreage of public water for which a certificate of location has been issued.

(12) [(11)] Location term--The 15-year term of a certificate of location.

(13) [(12)] Locator--A person or domestic corporation to whom or which a certificate of location has been issued.

(14) [(13)] Natural oyster bed (reef)--As defined in Parks and Wildlife Code, §76.001, an area with a substrate that is predominantly composed of oyster shell or live oysters. [§76.051, a natural oyster bed is an area where at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.]

(15) [(14)] Open season--A period during which it is lawful to take oysters.

(16) [(15)] Oyster--That species of molluscan shellfish identified as the Eastern oyster, *Crassostrea virginica* and its subspecies. No other species of molluscan shellfish are included within this proclamation.

(17) [(16)] Possess--The act of having in possession or control, keeping, detaining, restraining, or holding as owner, or as an agent, bailee, or custodian of another.

(18) [(17)] Prohibited area--The classification of a shellfish growing area determined by the TDSHS to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal permitted from a prohibited area is for the purpose of depletion, as defined in the Control of Harvesting Section of Part 1 of the NSSP.

(19) [(18)] Public oyster bed (reef)--As defined in Parks and Wildlife Code, §76.002, all natural oyster beds (reefs) are public. All oyster beds not designated as private are public.

(20) [(19)] Restricted area--The classification of a shellfish growing area determined by the TDSHS to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the TDSHS determines that the area does not meet the restricted area criteria established in the NSSP.

(21) [(20)] Sack of oysters--A volume of oysters, including dead oyster shell that weighs no more than 110 pounds including the sack.

(22) [(21)] Under location--An area subject to a certificate of location.

§58.30. *Certificate of Location.*

(a) General Rules.

(1) No certificate of location will be issued for:

(A) a natural oyster bed unless the department has determined that it is degraded, consistent with the provisions of Parks and Wildlife Code, §76.003(b) [as prescribed in Parks and Wildlife Code, §76.001];

[(B) an area that has been fished as a public reef within eight years of an application of a certificate of location as prescribed in Parks and Wildlife Code, §76.003;]

(B) [(C)] a bay shore area within 100 yards of the shore as prescribed in Parks and Wildlife Code, §76.004;

(C) [(D)] an area subject to an exclusive riparian right as provided under Parks and Wildlife Code, §76.004 and §76.005;

(D) [(E)] an area already under location; or

(E) [(F)] an area within 1,000 feet of a location not owned or controlled by the applicant unless the applicant secures written permission.

(2) The term of a certificate of location for purposes of harvest is 15 years, as prescribed in Parks and Wildlife Code, §76.018.

(3) The term of a certificate of location for purposes of restoration is 15 years.

(4) [(3)] In accordance with the Oyster Fishery Management Plan required by Parks and Wildlife Code, §76.301, the department may accept applications for certificates of location.

(5) No harvest of oysters is permitted from an area for which a certificate of location has been issued for restoration purposes.

(6) It is an offense for any person to move oysters from or cause oysters to be moved from an area for which a certificate of location has been issued except as provided by §58.40 of this title (relating to Oyster Transplant Permits) or §58.50 of this title (relating to Oyster Harvest Permits)

(7) A locator may conduct non-harvest activities after potentially damaging events, such as extreme weather events, on locations otherwise closed by DSHS, provided the locator has received prior authorization of the activity from the department in writing.

(b) Application for [(F)] Certificate of Location (Harvest or Restoration).

(1) An application for a certificate of location [If applications for certificates of location are being accepted by the department, they] shall be accompanied by a nonrefundable application fee of \$200.

(2) The department shall designate specific times and dates during which applications will be accepted and shall make such information publicly available. [ The applicant shall mark the proposed location site or sites with temporary poles and/or buoys in such a manner that the outline of the site or sites can be clearly determined.]

(3) Prior to the submission of an application, the applicant shall consult with an authorized employee(s) of the department to enable the department to determine necessary survey requirements and evaluate the prospective location with respect to:

(A) natural oyster reefs;

(B) shoreline;



- (C) areas restricted or prohibited by TDSHS;
- (D) spoil disposal areas;
- (E) other areas subject to a certificate of location;
- (F) riparian rights;
- (G) presence of exposed shell;
- (H) presence of live oysters;
- (I) sediment overburden; and
- (J) other habitats.

(4) An application must specify the purpose of the prospective certificate of location (for harvest or restoration purposes).

(5) ~~[(3)]~~ An [Eaeh] application shall consist of, at a minimum [eontain]:

(A) the applicant's name and address;

(B) signed affirmation that the applicant is a United States citizen or a domestic corporation [as prescribed in Parks and Wildlife Code, §76.006];

(C) a description of the acreage for which the [to be authorized by the] certificate of location is sought, including:

(i) a map [plat] showing approximate size and location in relation to state land tracts;

(ii) the corner coordinates of the proposed site; and

(D) a cultch placement plan for the site, including reasonable estimates of:

(i) the nature or composition of materials to be used;

(ii) the quantity of materials to be used; and

(iii) the time of placement or deployment.

~~[(D) signed letters each from the U.S. Army Corps of Engineers, General Land Office, and TDSHS indicating approval for the proposed location site.]~~

~~[(4) An authorized employee(s) of the department shall inspect the proposed location site or sites to determine its location with respect to:]~~

~~[(A) natural oyster reefs;]~~

~~[(B) shoreline;]~~

~~[(C) areas restricted or prohibited by the TSDHS;]~~

~~[(D) spoil disposal areas;]~~

~~[(E) other areas subject to a certificate of location;]~~

~~[(F) riparian rights;]~~

~~[(G) presence of exposed shell; and]~~

~~[(H) presence of live oysters.]~~

(6) The department shall approve or disapprove an application based on the totality of factors involved, including the suitability of the location with respect to the purpose and size of the area.

(c) Public Hearing on Application.

(1) If the department determines that [After having determined] the proposed location site meets all siting [location and exposed shell] requirements of this subchapter and Parks and Wildlife Code, Chapter 76, the department shall:

(A) hold a public hearing to provide opportunity for public comment [determine if the site has been publicly fished within eight years of the application for a certificate of location];

(B) publish a notification of the date, time, and purpose of the public hearing on the department website and any other outlet deemed appropriate [at least once in a newspaper of general circulation in the county closest to the proposed location];

(C) publish the notification between ten and 20 days prior to the public hearing; and

(D) make information about the proposed certificate of location available to the public [information about the proposed application for a certificate of location ten days prior to the date of] at the hearing. [; and]

~~[(E) present the investigation report at the public hearing.]~~

(2) The department will consider all public comment relevant to the application. [Persons objecting to the proposed certificate of location must submit a sworn affidavit or testify under oath at the public hearing stating reasons for the objection].

(3) The department shall review findings of the public hearing and submit recommendations to the Coastal Fisheries Division Director for approval.

(4) The applicant will be notified within 14 [ten] days after the hearing of either approval or denial of the application for a certificate of location.

~~[(5) The application approved by the department will be forwarded to the Coastal Coordination Council for final approval.]~~

~~(d) Responsibilities of Approved Locator. [Approved Procedures for Applicant.]~~

(1) The department will not make a final decision to approve an application for a certificate of location until:

(A) the applicant has provided the department with:

(i) a map of the location showing the relation of the location with respect to surrounding or nearby state land tract boundaries;

(ii) the latitude and longitude coordinates of the location; and

(iii) evidence to satisfy the department that all applicable permits and authorizations required by other state and federal governmental entities have been secured; and

(B) the department has inspected the location and verified the latitude and longitude coordinates required under subparagraph (A) of this paragraph.

[(1) Applicant shall be responsible for having a final survey of the approved location conducted by a registered surveyor who will furnish the department with survey notes and a plat showing:]

~~[(A) the location in relation to state land tract boundaries; and]~~

~~[(B) latitude and longitude coordinates for all location corner markers.]~~

(2) Prior to any placement of cultch or other materials, the locator shall [The applicant shall ] mark the boundaries of the location with buoys or other permanent markers in accordance with United States Coast Guard regulations [ at the time of the final survey] and maintain buoys or other permanent markers for the duration of the pe-

riod of validity [until termination] of the certificate [of location]. Supplemental markers may be required along the boundaries if one corner marker is not clearly visible from another corner marker.

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

(C) When [H] replacement of buoys or other permanent markers is necessary, original latitude and longitude coordinates of the final survey must be used to relocate markers.

(3) An authorized employee(s) of the department shall inspect and verify latitude and longitude coordinates.

(4) A locator shall submit proposed amendments to a placement plan to the department for review. The department must approve amendments to a placement plan prior to any activities under a prospective amendment. [The department shall return approved application for appropriate registration by applicant with the county clerk in the county of location.]

(5) In the event that unavoidable or unforeseeable developments or extenuating circumstances make the attainment of the benchmarks in this paragraph impractical or impossible, the department may, on a case-by-case basis, waive, defer, or amend a benchmark. Beginning on the date of issuance of certificate of location for purposes of restoration, the locator shall submit documentation of project progress to the department as follows:

- (A) placement initiated--within the first 24 months;
- (B) 50% of the plan completed--within five years;
- (C) 60% of the plan completed--within 10 years; and
- (D) 80% of the plan completed--by time of renewal.

(6) [(5)] Rental Fee.

(A) The holder of a certificate of location for harvest shall pay to the department (\$20) per acre of location per year. The fee established by this subparagraph shall be recalculated at three-year intervals beginning on the effective date of this section and proportionally adjusted to any change in the Consumer Price Index, the department's cost-recovery needs, or both.

(B) Rental fees for certificates of location for harvest are due annually by March 1 as prescribed in Parks and Wildlife Code, §76.017.

(C) The holder of a certificate of location shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due as prescribed in Parks and Wildlife Code, §76.017.

(D) (No change.)

(E) There is no rental fee for certificates of location for restoration.

(7) [(6)] Renewal of Certificate of Location.

(A) As prescribed in Parks and Wildlife Code, §76.018, at the end of the term of a certificate of [a] location for harvest [term] the department shall determine the need for continuation of the certificate of location based on:

(i) [the need for depuration of oysters from non-approved areas; and]

[(ii)] [other] considerations as specified in §58.12 of this title (relating to Oyster Fishery Management Plan); and[:]

(ii) any other consideration the department deems significant enough to warrant continuation.

(B) If the certificate of location for harvest is to be renewed under the conditions of the department as prescribed in Parks and Wildlife Code, §76.018, the holder of the certificate of location shall be offered the first right of refusal for renewal as prescribed in Parks and Wildlife Code, §76.018.

(C) Certificates of location for restoration will be renewed at the request of the locator.

[(C)] If there is any alteration to the boundaries of a location, the holder of a certificate of location shall be responsible for having the location resurveyed by a registered surveyor who will provide the department with survey notes and a plat of the location showing[:]

[(i)] the location in relation to state land tract boundaries; and]

[(ii)] latitude and longitude coordinates for all corner markers.]

[(D)] The survey will be conducted and provided to the department within one year of renewal of the certificate of location;]

(8) Alteration of Boundaries

(A) The department must approve all boundary alterations prior to any alteration of boundaries of a certificate of location.

(B) If there is any alteration to the boundaries of a location, the locator shall be responsible for having the location resurveyed and providing the department with survey notes and a map of the location showing:

(i) the location in relation to state land tract boundaries; and

(ii) latitude and longitude coordinates for all corner markers.

(C) The department will not approve any alteration of the boundaries of a certificate of location until the survey required by this paragraph has been conducted and provided to the department.

(9) [(7)] Auction Procedures.

(A) A certificate of location for harvest may be auctioned by the [The] department if it [may auction a location that] is not renewed as prescribed by this subchapter and Parks and Wildlife Code, §76.018.

(B) Auction procedures do not apply to certificates of location for restoration; if certificates of location for restoration are not renewed, the location automatically reverts to the public domain.

(C) [(B)] The department may determine a minimum acceptable bid based on:

(i) - (iii) (No change.)

(D) [(C)] The department may refuse all bids below the minimum acceptable bid.

(E) [(D)] The department must follow prescribed bid guidelines for state agencies.

(10) [(8)] Transfers or Sale [as prescribed in Parks and Wildlife Code, §76.019].

(A) A transfer or sale of a certificate of location does not change location terms.

(B) A payment of \$200 will be due upon transfer or sale of a certificate of location.

(C) A transfer fee will not be required when a certificate of location is inherited.

(D) A completed transfer form prescribed by the department is [will be] required at time of transfer.

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 65. WILDLIFE

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §§65.81 - 65.85, new §65.81 and amendments to §§65.80, 65.88, 65.90, 65.92, 65.94, 65.95, and 65.99, concerning Disease Detection and Response, and amendments to §§65.602 - 65.605, 65.610, and 65.611, concerning Deer Breeders Permits. The proposed repeals, amendments, and new rule would eliminate the current zone-based disease response strategy for chronic wasting disease (CWD) detections in free-range and captive deer populations, implement a new risk-mitigation strategy based on confirmed cases of CWD in free-range populations of native and exotic species, and implement additional testing and fencing requirements for deer breeding facilities. The intent of the proposed rules is to reduce the probability of CWD being spread from locations and facilities where it does or might exist.

CWD is a fatal neurodegenerative disorder that affects cervid species such as white-tailed deer, mule deer, elk, red deer, sika, and others (susceptible species). CWD is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep) and bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination).

The department and the Texas Animal Health Commission (TAHC) have been engaged in combatting CWD in Texas since 2002, including in response to repeated detections within deer breeding facilities. Since 2002, more than 150,000 "not detected" post-mortem CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 76,000 "not detected" post-mortem test results in addition to 112,000 ante-mortem test results as well.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated and are not thoroughly

understood. There is currently no scientific evidence to indicate that CWD is transmissible to humans; however, both the CDC and the World Health Organization strongly recommend avoiding consumption of meat from CWD-infected deer. What is known is that CWD is invariably fatal to cervids. Moreover, a high prevalence of the disease correlates with deer population decline in at least one free-ranging population in the United States, and there is evidence that hunters tend to avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either captive or free-ranging cervid populations. The potential implications of CWD for Texas and its multi-billion-dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and managed.

The department has engaged in frequent rulemaking over the years to address both the general threat posed by CWD and the repeated detection of CWD in deer breeding facilities. In 2005, the department adopted rules (30 TexReg 3595) that closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and recordkeeping. In 2012, based on recommendations from the department's CWD Task Force (an ad hoc group of deer management professionals, landowners, veterinarians, scientists, and deer breeders), the department adopted rules (37 TexReg 10231) to implement a CWD containment strategy in response to the detection of CWD in free-ranging mule deer located in the Hueco Mountains, the first detection of CWD in Texas. In 2015, the department discovered CWD in a deer breeding facility in Medina County and adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, followed by rules (41 TexReg 815) intended to function through the 2015-2016 hunting season. Working closely with TAHC and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department intensively utilized input from stakeholders and interested parties to develop and adopt comprehensive CWD management rules in 2016 (41 TexReg 5726). Since 2002, the department has made a continuous, concerted effort to involve the regulated community and stakeholders in the process of developing appropriate CWD response, management, and containment strategies, including input from the Breeder User Group (an ad hoc group of deer breeders), the CWD Task Force, the Private Lands Advisory Committee (an advisory group of private landowners from various ecological regions of the state), and the White-tailed Deer and Mule Deer Advisory Committees (advisory groups of landowners, hunters, wildlife managers, and other stakeholders), resulting in a series of rulemakings necessitated by or in response to the continued detections of CWD in both free-range and captive populations.

Until now, the department's strategy for containing CWD on the landscape was to respond to CWD detections in both captive and free-ranging populations by designating CWD management zones by rule. Within those zones, the movement of live deer under department-issued permits was restricted, testing of all hunter-harvested deer was required, and special provisions governing the processing and movement of deer carcasses were placed in effect. Those rules are contained in Division 1 of Chapter 65, Subchapter B. One unforeseen consequence of that approach is that the constant stream of CWD discoveries in breeding facilities has resulted in continuous rulemaking because each time CWD is discovered, the commission must promulgate a zone by rule in response. Staff has been directed by the commis-

sion to replace the current zone-based system with some other method of mitigating the risk of the spread of CWD that does not involve the necessity of rulemaking every time CWD is discovered in a breeding facility or free-range populations.

The rules contained in Division 2 of Chapter 65, Subchapter B, govern the department's disease management protocols with respect to the detection of CWD within deer breeding facilities. Those rules can generally be described as functioning together to implement testing standards necessary to provide statistically representative sampling within deer breeding facilities for purposes of minimally effective surveillance for CWD. One of the most effective approaches to managing infectious diseases and arresting the spread of a disease is to segregate exposed populations (individuals or populations with unknown contact with an infectious agent) from unexposed populations. As a matter of epidemiological probability, when animals from a population at higher risk of harboring an infectious disease are introduced to a population of animals at a lower risk of harboring an infectious disease, the confidence that the receiving population will remain disease-free is reduced.

Department records indicate that within the last five years, 29 deer breeding facilities where CWD has been confirmed transferred a total of 8,109 deer to 235 additional deer breeding facilities and 460 release sites located in a total of 139 counties in Texas.

The current comprehensive rules address disease response with respect to directly (facilities where CWD has been detected) and indirectly connected facilities (facilities that receive deer that were in the same facility with a CWD-positive deer prior to being transferred to another facility), implementing requirements for disease testing and movement of breeder deer to and from indirectly connected facilities, and requiring ante-mortem testing of all age-eligible deer prior to transfer to another breeding facility or release site. Those rules are predicated on a "tracing" model that is a universally accepted epidemiological methodology for disease tracking and control. The department, TAHC, and the United States Department of Agriculture (USDA) utilize a five-year "trace window" to develop information to characterize the particulars concerning the potential spread of CWD. The five-year window is important because (based on the literature and the USDA cervid disease program standards) it encompasses the time period from possible exposure to CWD, through the incubation period, to the time at which the disease can be transmitted to another animal or the environment.

The current rules also address disease transmission risk associated with the movement of deer carcasses by implementing statewide disposal requirements. These disposal requirements ensure that unused carcass parts are either left at the site of harvest, disposed of in a landfill, or buried under at least three feet of earth. Proper carcass disposal mitigates risk associated with environmental contamination and potential spread of infected carcass parts by scavengers, providing an effective management strategy.

The proposed rules are necessary to protect the state's white-tailed and mule deer populations, as well as the long-term viability of associated hunting, wildlife management, and deer breeding industries. To minimize the severity of biological and economic impacts resulting from CWD, the proposed rules implement more rigorous protocols within deer breeding facilities located in a specified proximity to a free-range CWD detection than was previously required in CWD Containment Zones. The proposed rules would provide a pathway for any deer breeders

within a specified proximity to a free-range CWD detection to continue to move and release breeder deer. The proposed rules continue the existing extensive cooperation between the department and TAHC and the continued involvement of various stakeholder groups and interested parties.

The proposed repeals would eliminate rules that establish CWD management zones and prescribe conditions for live animal movement under department-issued permits within those zones, special provisions for breeding facilities within zones, powers of the executive director, and check station requirements, none of which will be necessary if the proposed amendments and new section are adopted.

The proposed amendment to §65.80, concerning Definitions, would remove the current definitions, which are either unnecessary or redundant, and allow the definitions of §65.90, concerning Definitions, to be applicable to the entirety of the subchapter.

Proposed new §65.81, concerning Risk Mitigation Provisions, would implement a new approach for isolating, reducing, and if possible, preventing the spread of CWD from locations where it is confirmed to exist, without the need for rulemaking each time a detection occurs, and without utilizing check stations or mandatory testing of hunter-harvested deer. The new approach is based on additional safeguards with respect to the movement of live deer under department-issued permits in proximity to locations where CWD is detected in free-range deer.

Proposed new subsection (a) would provide for the applicability of the proposed new rule to the human-assisted movement of live deer under department-issued permits within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species or within 25 miles of a location where CWD has been detected in a free-range mule deer (hereinafter, "proximity to a free-range positive," "proximity values"), provide for resolution of conflict with other regulatory provisions, and allow for the cessation of the rule's applicability when the department has determined, using the best available science, that CWD is not likely present in such areas. The proposed new subsection is necessary to clearly articulate when and where the provisions of the new rule apply, and under what conditions the applicability of the rules cease. The five-mile and 25-mile values were selected because they represent the average natural dispersal ranges for free-range buck white-tailed and mule deer, respectively. The five-mile proximity factor is also applied to susceptible species as a general index of movement and takes into consideration that such animals are not indigenous.

Proposed new subsection (b) would specifically address the movement of live deer under a deer breeder's permit in proximity to a free-range positive. Proposed new subsection (b)(1) would specify that the department will notify the holder of a deer breeder's permit in the event that the permittee's facility has become subject to the applicability of the rule, which is necessary to establish the point in time the department will use to calculate compliance with various time-based provisions of the rules.

Proposed new subsection (b)(2) would provide that a deer breeder in proximity to a free-range positive could, provided the facility is designated movement qualified (MQ) by the department (authorized by the department to transfer deer), continue to transfer deer, but only to other breeders or release sites that are also within proximity to the free-range positive. The department's primary concern is to prevent the spread of CWD

from where it is known to exist by limiting the movement of live deer via department-issued permits from such areas to new areas beyond the natural dispersal range of deer, which is the case under rules currently in effect.

Proposed new subsection (b)(3) and (4) would provide for the conditions under which the department would allow the transfer of breeder deer from a breeding facility in proximity to a free-range positive to locations beyond the proximity distances. The department has determined that if a breeding facility in proximity to a free-range positive is "double fenced," all eligible-age deer within the facility are ante-mortem tested (with results of "not detected"), and one year has passed following the whole-herd test, the risk of spreading CWD is probably low. A "double fence" is believed to be an effective (but not absolute) barrier to CWD transmission because it prevents physical contact between free-range animals (both native deer and susceptible species) and breeder deer. In order to gain some assurance that CWD has not been passed from free-range animals to deer within a facility, a whole-herd ante-mortem test functions as an efficacious screening tool in conjunction with current rules requiring individual breeder deer to be ante-mortem tested prior to transfer; thus, the combination of physical barrier, whole-herd testing, sufficient time, and individual testing prior to transfer is believed to present an acceptable assurance that the likelihood of CWD being present (yet undetected) is low, especially when combined with mandatory retention of visible identification on all breeder deer at release sites, which will greatly assist in the recovery and testing of exposed animals should CWD be detected in the originating facility.

Proposed new paragraph (4) would acknowledge the epidemiological value to breeding facilities prospectively affected by the new rules of the efficacy of surveillance achieved during the effectiveness of the current rules being proposed for repeal in this rulemaking. Under those rules, all hunter-harvested deer in CWD management zones were subject to mandatory or voluntary CWD testing. In order to accommodate the situations in which a breeding facility was prohibited under the CWD management zone rules from transferring deer to any location authorized to receive breeder deer, the proposed new rule would allow such facilities to transfer deer to any location in the state authorized to receive deer, provided the facility meets the new fencing requirements in the proposed amendment to §65.905, concerning Facility Requirements and Care of Deer, and is otherwise authorized to transfer deer (i.e., not a breeding facility where CWD has been confirmed or a breeding facility epidemiologically linked to a breeding facility where CWD has been confirmed or otherwise not in compliance with rules regarding movement qualification).

Proposed new subsection (b)(5) would provide for situations in which a new permit is sought for a facility at a location that is already within proximity values from a free-range positive. As discussed previously in this preamble, the proximity values of the rules are predicated on the natural range of indigenous species of deer and reflect the premise that where CWD is known to exist the likelihood of its detection, if it is spreading, can be expected to be higher at closer distances to the free-range positive ("index case" or "index positive"); therefore, the proposed new paragraph would implement a number of measures intended to minimize the elevated risk of spreading CWD via the movement of breeder deer from facilities in proximity to an index case. First, the proposed new paragraph would require a prospective permittee to conduct an environmental assessment (using department-approved methodologies) of possible exposure of the site to CWD prions, which is necessary to provide assurance that a

site is not already infected (in which case the department will not authorize the facility to receive deer; it is axiomatic that places where CWD is known to exist should not be the location of deer breeding activities that could cause the transmission of CWD to additional animals). The proposed provision would also stipulate that if the site was ever previously the site of a deer breeder facility, the environmental assessment would be required for the entirety of that site. Second, the proposed new paragraph would require, for an initial period of three years following the first introduction of deer to a new facility, that all deer introduced into or born in the facility remain in the facility for a minimum of 20 months (i.e., "residency,"), which is necessary to provide another layer of assurance that CWD is not present. The 20-month value represents the minimum length of time, post-exposure to CWD prions (if present), that CWD could be expected to have progressed to the point of being detectable using current testing methodologies. Proposed new paragraph (6) would provide that during the three-year period required by proposed new paragraph (5), the department would authorize the transfer of deer meeting the 20-month residency requirement to any breeding facility authorized to receive deer, but with respect to release sites, only to release sites that are also in proximity to the free-range positive. The transfer of deer to other breeding facilities does not represent as high a comparative risk for epidemiological assessment as the transfer of deer to release sites, because deer within breeding facilities are available for testing. On the other hand, deer transferred to release sites become free-range animals; therefore, the department believes it is prudent to restrict the transfer of deer for purposes of release to only those areas that are also within proximity to the index case. The proposed new provision also would allow the department to waive the 20-month residency requirement after the initial three-year period if the department determines there is reason to believe CWD prions are not present in the facility.

Proposed new subsection (b)(7) would provide that the department will issue a new breeder permit to any qualified individual, but will not authorize the possession of breeder deer at any location where a susceptible species has tested positive for CWD or where CWD prions are determined to exist. The department does not believe it is prudent to allow deer to be introduced to a location where CWD is already known to be present.

Proposed new subsection (b)(8) would prohibit the recapture of deer that escape from a deer breeding facility located in proximity to a free-range positive except as authorized by the department or in a herd plan. A deer that escapes from a facility in proximity to a free-range positive could become exposed to CWD; therefore, the return of an escaped deer to a deer breeding facility could introduce CWD to that facility, which is undesirable. Therefore, the proposed new provision would prohibit return of escaped breeder deer to breeding facilities in proximity to a free-range positive while making exceptions for situations in which the department believes recapture is necessary and the risk is low or non-existent, or it is otherwise allowed under a herd plan.

Proposed new subsection (b)(9) would address the expansion of an existing deer breeding facility in proximity to an index positive by requiring the site to be subject to the assessment and residency measures required by paragraphs (5) and (6) and treating the expanded facility as a new facility. The enlargement of a facility in an area where CWD has been discovered means that environmental contamination could have occurred and CWD could now be present within the perimeter of the enlarged facility. Therefore, the proposed amendment would prescribe the same

requirements to assess and screen for the presence of prions that are prescribed by rule for new facilities.

Proposed new subsection (c) would provide for the authorization of activities pursuant to a Deer Management Permit (DMP) at a property in proximity to a free-range positive. A DMP authorizes the capture and temporary captivity of free-range deer for natural breeding purposes (which may include exposure to breeder deer introduced to the temporary breeding enclosure) within a high-fence property, after which the deer must be released to the wild. The department reasons that CWD prevalence (if CWD exists) in the population of deer on that property could be exacerbated because deer are concentrated in a DMP pen; therefore, the proposed new subsection would require DMP recipients to test either 100 percent of hunter-harvested deer or 15 hunter-harvested deer (whichever is lower) during the hunting season for which the DMP was issued, and retain it for a period of one year. The department has some idea of disease status on the property. The proposed new provision also would require permittees to maintain a daily harvest log, provide it upon request of any department employee acting within the scope of official duties, submit it to the department electronically by the April 1 following the hunting season for which it was issued, and retain it for a period of one year. The harvest log is a useful tool for the department in the event that an epidemiological investigation becomes necessary. The proposed new subsection would condition the further issuance of DMPs on compliance with the test requirements of the proposed new subsection and specify methodology for permittees to attain compliance in the event that a permittee is unable to provide a sufficient number of test results for the year of permit issuance. Finally, the proposed new subsection would provide that the department will not issue a DMP for any property where CWD has been confirmed or that is epidemiologically linked to a positive facility. It is axiomatic that places where CWD is known to exist or that have received deer from a breeding facility where CWD exists should not be used as locations for deer-breeding activities that could cause the transmission of CWD to additional animals.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, would standardize carcass movement restrictions to eliminate separate requirements for susceptible species harvested outside of Texas and clarify existing rules governing disposal of carcasses. The proposed amendment would eliminate current subsection (a), modify current subsection (b) to accommodate applicability to susceptible species harvested outside of Texas, add new subsection (b) to expressly prohibit rendering as an acceptable method of disposal, and alter current subsection (c) to allow for the deboning of carcasses at a location other than the property of harvest. The proposed amendment also would clarify that persons opting to inter unused carcass parts are expected to immediately cover those parts as provided in the current rule, and that in the time period, if any, between the processing of a carcass and eventual disposal, the unused carcass parts must be protected from being scattered, consumed, or removed. The proposed amendment is intended to remove ambiguity regarding the timeliness of compliance with the current rule and clarify what is and what is not an acceptable method of carcass disposal. Similar changes are made to subsection (d). The proposed amendment would eliminate current subsections (e) and (f) because they would no longer be necessary if other elements of this proposed rulemaking are adopted.

The proposed amendment to §65.90, concerning Definitions, would add definitions for "CWD-positive," "free-range deer," "location of detection," "not available/unavailable for test-

ing," "positive breeding facility," "susceptible species," and "whole-herd test." All white-tailed and mule deer in this state are the property of the people of this state; however, various provisions of Parks and Wildlife Code authorize the temporary or (conditionally) permanent possession of white-tailed and mule deer under certain permits. The provisions of this subchapter distinguish between deer held in captivity under a deer breeding permit from all other deer and it is helpful to have a useful term to refer to all deer other than deer held in captivity; therefore, the proposed amendment would define "free-range deer" as "a deer that is not a breeder deer." Similarly, the provisions of the subchapter are frequently conditioned on the confirmed presence or assumed absence of CWD in various scenarios; therefore, "CWD-positive," would be defined as "an animal that has received a "detected" or "positive" CWD test result confirmed by the National Veterinary Services Laboratory," and "positive breeding facility" would be defined as "a deer breeding facility where CWD has been confirmed to exist." "Not available/unavailable for testing would be defined as "for a Category B trace-out deer breeding facility, a deer that is no longer present in a facility and cannot be found or the whereabouts of which are otherwise unknown." The provisions of the rules as proposed create different compliance scenarios affecting facilities that have been epidemiologically linked to a positive facility. Those scenarios depend on the presence or absence of deer that could have been exposed (and thus infected) to CWD and the availability of those deer for testing. In some cases, a deer might already have been released and cannot be found, or perhaps died without being tested; therefore, a definition of the term is necessary to clearly indicate when the provisions of various elements of the rulemaking are to be employed. The proposed amendment would define "susceptible species" as "any cervid species or part of a cervid species that is susceptible to CWD," which is necessary because white-tailed and mule deer can contract CWD from certain species of exotic livestock and non-native wildlife; thus, the proposed rules must account for the discovery of CWD in animals in general, not just in native wildlife. "Whole-herd test" would be defined as "the administration of an ante-mortem test to the entirety of test-eligible deer in the inventory of a breeding facility," which is necessary to create a useful shorthand reference. In proposed new §65.81, concerning CWD Risk Mitigation Provisions, the applicability of that section to breeding facilities is predicated on the distance any given deer breeding facility is from a location where CWD has been confirmed in a free-range white-tailed, mule deer, or other susceptible species. The department intends for that standard to be as close as possible to the actual distance between the deer breeding facility and the exact spot where the deer was killed, but acknowledges that this will not always be possible; therefore, the proposed amendment would define "location of detection" as "the exact location, to the extent that it can be determined, at which a deer confirmed to be positive for CWD died." Finally, the proposed amendment would also alter the definition of "liberated deer" to remove redundancy and include the presence of other identifiers that could testify to the fact that a deer was at one time a breeder deer.

The proposed amendment to §65.92, concerning CWD Testing, would alter internal references to conform with changes being proposed elsewhere in the rulemaking that would allow retropharyngeal lymph nodes (RLN) by themselves to be sufficient for testing purposes with respect to DMP activities in proximity to a free-range positive. RLNs have greater sensitivity than the obex for detecting CWD in deer; further, because DMP activities are unidirectional (the deer remain on the property and cannot be

moved) and much reduced in potential for epidemiological complexity, the epidemiological information gained by submission of both tissues is of less importance; thus, a single type of tissue can be used for testing, as opposed to the lymph node/obex pair required for testing in deer breeding facilities, where epidemiological complexity can be significant.

The proposed amendment to §65.94, concerning Breeding Facility Minimum Movement Qualification, would alter an internal citation to reflect changes made to the title of §65.605, concerning Facility Standards and Care of Deer, elsewhere in this rule-making.

The proposed amendment to §65.95, concerning Movement of Breeder Deer, would require the owner of a prospective release site for breeder deer to provide independent verification that the entirety of the release site is surrounded by a fence meeting the requirements of current subsection (c)(3). There have been instances in which unscrupulous persons have been untruthful with respect to the fence requirements or the actual location of a release site. Although it is a violation of current rule and Parks and Wildlife Code to fail to have and maintain a lawful fence, the sheer number of release sites makes it impossible for the department to verify that every release site is in compliance with the rules; therefore, because the department firmly believes it is imperative that released breeder deer be to some reasonable extent segregated from other free-range populations because of the threat of CWD, it is prudent to require an independent confirmation that the required fencing exists as a condition of authorizing such releases.

The proposed amendment also would prohibit the release of breeder deer that are not permanently marked in accordance with the requirements of Parks and Wildlife Code, §43.3561, which stipulates that not later than March 31 of the year following the year in which a breeder deer is born, the breeder deer must be identified by placing a tag in one ear. Section 43.3561 also requires deer breeders to immediately replace an identification tag that has been dislodged, damaged, or removed by means other than human agency and allows the removal of a tag only for the purpose of immediately replacing the tag with a tag that meets the requirements of Parks and Wildlife Code, §43.3561. Faithfulness to the statute, especially in light of the proposed amendments, will increase the ability of the department and landowners to quickly identify and remove specific deer from release sites for testing in the event a release site becomes epidemiologically linked to a deer breeding facility where CWD has been confirmed, greatly assisting in disease management and response.

The proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities, would eliminate references to provisions in Division 1 of this subchapter that would no longer be necessary if other proposed provisions of this rulemaking are adopted. The proposed amendment also corrects an inaccurate internal reference in subsection (e)(3).

The proposed amendment also would add new subsection (f) to provide additional avenues to MQ status for breeding facilities that have been designated NMQ because they are epidemiologically linked to a positive facility (index facility) under subsection (e) of the current rules (i.e., Category B Trace-out Facilities). The proposed amendment would provide two alternatives to the current five-year trace window, both based on the elapsed time since any given facility has been epidemiologically connected to the index facility. The first addresses the riskiest facilities, those in which deer implicated in an epidemiological

investigation were received by the facility 36 months or less following detection of CWD in the index facility. Proposed new subsection (f)(1) would provide that for such facilities, MQ status could be restored, provided the facility is fenced in accordance with the proposed amendment to §65.605, concerning Facility Standards and Care of Deer; all trace deer available for testing (whether in the facility or in another facility as a result of transfer) are tested as required under current rule; a minimum of 25 percent of the total number of test-eligible deer in the facility are tested (ante-mortem or post-mortem, with "not detected" results) in each of the two reporting years following notification of Category B status; all trace deer that cannot be located for testing were in the facility for at least 20 months before being ante-mortem tested (with "not detected" results); and the facility has been in compliance for the previous two reporting years with all provisions of statute and rule that govern the possession of breeder deer. The proposed provision utilizes a combination of enhanced physical barriers, elevated testing effort, and residency requirements, in the context of continuous regulatory compliance, to provide a realistic, though minimal, assurance that if CWD has been introduced to a Category B facility, it will a) not be spread via physical contact through a single fence from animals in the facility to animals outside the facility, and b) be detected in the facility before deer are transferred elsewhere. The department notes that although the proposed measures provide a few scientifically defensible protections, they do not provide absolute or even high confidence that CWD will not be spread from facilities where they are employed.

The second pathway addresses facilities in which deer implicated in an epidemiological investigation were received by the facility more than 36 months following detection of CWD in the index facility. Empirical evidence suggests that the incubation period of CWD is typically around 24 months, depending on the individual animal, and becomes easier to detect, if present, from that point on. Thus, for facilities in which trace deer were received at a point in time earlier than 36 months from the date a facility becomes a Category B facility, there is a correspondingly increased assurance that if it is present it will be detected, provided a double fence segregates breeder deer from other susceptible species, all trace deer available for testing are post-mortem tested, all trace deer unavailable for testing were ante-mortem tested (with results of "not detected") at least once in the 60 months from the time CWD was detected in the positive facility (or at any time after the detection occurred), and the facility is in compliance with all statutory or regulatory provisions applicable to the possession of breeder deer. Having noted that the provisions as proposed are approaching minimally acceptable standards with respect to disease detection and management, the department strongly encourages the regulated community to recognize the value of due diligence with respect to the provenance of deer acquired from other breeders and the magnitude of potential disease transmission, which will greatly aid the department in disease management efforts as well as precluding the imposition of measures that absolutely can be avoided with greater caution. Furthermore, the department seeks to emphasize the importance of regulatory compliance by the regulated community, as circumvention of rules frustrates the effectiveness of efforts to mitigate disease transmission and poses avoidable risks to other members of the regulated community, landowners, and hunters. Finally, the proposed new provision would stipulate that compliance with the rules as proposed would not relieve a permittee of any obligations otherwise imposed by a herd plan, which is necessary to make clear that terms and conditions of herd plans, because they are jointly administered and enforced

by the department and TAHC, are independent from and in addition to the regulatory requirements of the subchapter.

The proposed amendment would alter current subsection (h) to implement additional measures to facilitate and expedite the department's epidemiological investigations in the event that CWD is confirmed in a breeding facility. The proposed amendment would require a permittee, within 14 days of being notified of a suspect detection, to conduct and provide to the department a pen-by-pen inventory (to include the pen where the positive deer was at the time of the detection), immediately cease the internal movement of deer between pens in the facility unless otherwise authorized by the department, euthanize all trace deer within seven days (unless authorized by the department or in a herd plan), and either enter into a herd plan or agree to depopulate the facility. The prompt isolation of deer, cessation of deer movement, removal of trace deer, and initiation of mitigation actions greatly aids department efforts to contain and slow the spread of CWD. Finally, the proposed amendment would make conforming changes to internal cross-references.

The proposed amendment to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions, would add a reference to Subchapter B of the chapter to subsection (b)(4) and eliminate the time-based provision in subsection (d). The proposed amendment to subsection (b) is necessary because another element of this rulemaking would affect attempts to recapture escaped breeder deer and the two provisions should be harmonized to prevent confusion. The proposed alteration to subsection (d) is necessary because the provision is no longer applicable or necessary. The proposed amendment would eliminate current subsection (e) and relocate its contents to §65.605, concerning Facility Standards and Care of Deer, so that all provisions regarding fencing and infrastructure are in a single location. The proposed amendment to §65.603, concerning Application and Permit Issuance, would require applicants for a new deer breeder's permit to provide evidence that required fencing exists and has been inspected as stipulated by §65.605, concerning Facility Standards and Care of Deer (for reasons addressed earlier in this preamble in the discussion of proposed new §65.81) and clarify that a facility/fence inspector cannot be an employee of the department or the permittee, which is intended to prevent conflicts of interest. The proposed amendment also would update an internal reference to definitions.

The proposed amendment to §65.604, concerning Disease Monitoring, would alter the reference to Subchapter B of Chapter 65 to remove a reference to Division 2, which is no longer necessary in light of proposed amendments contained in this rulemaking.

The proposed amendment to §65.605, concerning Holding Facility Standards and Care of Deer, would retitle the section, implement additional fencing requirements, prescribe internal infrastructure requirements, and prohibit the sharing (except for specific temporary instances) of any space within a breeding facility with any animals other than the breeder deer permitted to be in the facility.

Elsewhere in this rulemaking the department proposes rules to prescribe standards to mitigate the risk of the spread of CWD from locations where it has been confirmed in free-range populations of susceptible species. One component of those risk-mitigation measures is the requirement for affected deer breeding facilities to erect additional fencing (i.e., "double fence") as necessary to ensure that deer within the facility (with one exception for temporary movement within a facility) are at all times behind at least two fences capable of retaining deer. For ease of reference,

this is referred to as "double fence" or "double fencing." The department believes it is prudent to require all new deer breeding facilities to comply with those fencing standards moving forward, which will provide additional protections with respect to disease transmission and the benefit of enhancing the ability of new facilities to seamlessly maintain movement status in the event that CWD is confirmed in proximity to the facility at some point in the future. The proposed amendment would stipulate that the external, perimeter fence component at no point be within five feet of an internal component of the double fence, or within ten feet of the perimeter fence component of another deer breeding facility, both of which are necessary to prevent nose-to-nose or direct contact between deer in one facility and deer in another facility or free-ranging susceptible species.

The proposed amendment to 65.605 also would add new subsection (c) to make explicit that under the rules as proposed, a deer breeding facility would consist of the entirety of the area within the perimeter fence required under proposed new subsection (b).

The proposed amendment to §65.605 also would add new subsections (d) and (e) to ensure that breeder deer are at all times (with exceptions) contained inside the "double fence" and stipulate that in the interstitial spaces between the perimeter fence of the facility and the fencing of the pens within the facility, no supplemental food or water is permitted and no animals (including breeder deer) are allowed to be present, except what is necessary to facilitate movement of breeder deer between pens within the facility. As noted earlier in this preamble, CWD can be transmitted environmentally (contaminated soil, vegetation, feed, excrta) as well as through direct animal-to-animal contact. The department considers that it is therefore important for the spaces between internal fencing components (e.g. facility pens) and the perimeter fence to function as a buffer to prevent direct animal contact. The proposed amendment contains an exception for the temporary use of such spaces as needed to move or drive deer between fenced components within the facility, provided they are not allowed to linger or to have unsupervised access to such spaces.

The proposed amendment to §65.605 also would create new subsections (f) - (h) to clarify the use of infrastructure within the perimeter fence of a deer breeding facility with respect to animals other than the breeder deer within the facility. The department has become aware that in some cases breeder deer from more than one permitted facility have been allowed shared access to handling barns and working pens, which should not be allowed because it presents an unacceptable risk of CWD being transmitted between breeding facilities via environmental or direct contact. Therefore, the proposed amendment relocates the requirements of current §65.602(e), and explicitly prohibits the shared use of infrastructure by breeder deer within the facility and any other susceptible species, other than the temporary use of such infrastructure for handling and working livestock and non-susceptible species. The amendment as proposed also would clarify that facility infrastructure such as buildings, sheds, etc. need not be completely within and separate from the perimeter fence required by the proposed rule, so long as the external walls of various infrastructure function as a de facto component of the double fencing required by the proposed rules. The proposed amendment to §65.605 also would add proposed new subsection (i) to clarify that no current permittee would be required to erect a perimeter fence but all permittees would be required to comply with the other provisions of the proposed amendment. Finally, the proposed amendment would add new subsection (i)



to require all deer breeding facilities on a single property to be separated by at least 10 feet. In this way, there is no shared fencing that would allow direct animal-to-animal contact.

The proposed amendment to §65.610, concerning Transfer of Deer, would acknowledge the offense of violating Parks and Wildlife Code, §43.3561, for reasons explained earlier in this rulemaking with respect to the proposed amendment to §65.95.

The proposed amendment to §65.611, concerning Prohibited Acts, would make changes as necessary to conform the applicability of the section to the rules as proposed.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no negative fiscal implications to state or local governments as a result of administering or enforcing the rules, as the rules will be administered and enforced using existing personnel as part of their current duties under existing budgets. There may be positive fiscal implications to the department if the costs of CWD testing on hunter-harvested deer drop significantly as a consequence of the elimination of mandatory testing in CWD management zones required under previous rules; however, because that value cannot be predicted, it cannot be quantified.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the minimally acceptable probability that CWD will not be spread from locations and facilities where it might exist, which is necessary to assure the public of continued enjoyment of the resource and the continued beneficial economic impacts of hunting in Texas. Additionally, the protection of free-ranging deer herds will have the simultaneous collateral benefit of protecting captive herds and maintaining the economic viability of deer breeding operations.

There will be an adverse economic impact on persons required to comply with the rules as proposed, in the form of costs associated with CWD testing at properties conducting activities under a DMP. Those testing costs are the same as the adverse economic impacts to small and microbusinesses and rural communities, which are addressed later in this preamble.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will result in increased costs to deer breeders in the form of additional required testing, additional facility requirements, and potential loss of sales. Therefore, the department has prepared the economic impact statement and regulatory flexibility analysis described in Government Code, Chapter 2006.

Parks and Wildlife Code, §43.357(a), authorizes a person to whom a breeder permit has been issued to "engage in the busi-

ness of breeding breeder deer in the immediate locality for which the permit was issued" and to "sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation." As a result, deer breeders are authorized to engage in business activities; namely, the purchase and sale of breeder deer. The same is not true of other permits issued by the department, which authorize only the temporary detention and release of deer and do not authorize the purchase or sale of deer.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than \$6 million in annual gross receipts.

Department data indicate that there are 650 permitted deer breeders in Texas as of the preparation of this analysis. Although the department does not require deer breeders to file or report financial information with the department, the department believes that most if not all deer breeders qualify as a small or micro-business. Since the rules as proposed would impact the ability of a deer breeder to engage in certain activities undertaken to generate a profit, the proposed rules could have an adverse impact on deer breeders.

The variety of business models utilized by deer breeders makes meaningful estimates of potential adverse economic impacts difficult. As noted, the department does not require deer breeders to report the buying or selling prices of deer; however, publicly available and anecdotal information indicates that sale prices, especially for buck deer, may be significant, ranging from hundreds of dollars to thousands of dollars.

It should also be noted that some aspects of this analysis are based on marketplace behavior that cannot be accurately predicted. In addition, to the extent that any marketplace analysis can be conducted, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the rules from marketplace behavior that is the result of the discovery of CWD. For reasons unrelated to the proposed rules, it is possible, perhaps even likely, that breeders and release site owners will be reluctant to purchase a breeder deer from a facility with a close relationship or a perceived relationship to a facility near or at which CWD has been detected. As noted earlier in this analysis, the department, for a variety of reasons, views the proposed rules as the minimally acceptable standard necessary to have a meaningful chance at preventing CWD from being spread from locations where it is known to exist; beyond that standard, confidence regarding the health of deer in any given deer breeding facility is a matter of trust between buyer and seller.

The department notes that at the current time there would be two permitted deer breeders who could be adversely impacted if the proposed rules were in effect today, based on department data. All potential adverse economic impacts to permitted deer breeders as a result of the proposed rules would be dependent on the discovery of CWD in free-range populations within the specified proximities to deer breeding facilities; therefore, if CWD is not detected within the specified proximities, the rules would have no effect on any permitted deer breeder except as noted.

One of the two deer breeders who would be immediately affected by the proposed rules releases deer only to an adjacent release site that is also within five miles of a free-range detection. If that deer breeder desired to transfer deer beyond the five-mile distance from the nearby positive location, that breeder would

be required to meet the fencing and testing requirements of the proposed rules.

The other deer breeder who would be immediately affected by the proposed rules already meets the requirements of the proposed rules and would be permitted to transfer deer to any facility in the state authorized to accept deer.

There will be no adverse economic impacts for deer breeders whose facilities are located within five linear miles of a location where CWD has been confirmed in free-range white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been confirmed in a free-range mule deer, are designated MQ, and who transfer deer only to release sites and breeding facilities that are within the specified proximity to the free-range positive.

The proposed rules, if CWD is confirmed within the proximal distances to any deer breeder, would require affected permittees who desire to transfer breeder deer anywhere in the state to construct additional fencing to ensure that breeder deer are behind two fences at all times. Because the physical layout and internal design of breeding facilities varies greatly, it is difficult to account for all the possibilities; thus, for the purposes of this analysis, the department estimates the maximum cost of compliance with fencing requirements to be approximately \$88,000, which was derived by multiplying the current highest estimated cost per linear mile for fencing meeting the requirements of the rules (\$55,000, in mountainous or rugged terrain, variable by region) multiplied by the perimeter footage of a square-shaped 103-acre facility (the largest deer breeding facility in the state, according to department records, is 103 acres and the department for the purposes of this analysis used an equilateral model to calculate the linear length of the perimeter, which could vary by facility), which is approximately 1.6 miles. The average size of a deer breeding facility property is 14 acres and the median size is nine acres. Based again on an equilateral model, the maximum estimated cost to fence a 14-acre facility would be \$32,538, and the maximum estimated cost for a nine-acre facility would be \$26,089. Department records indicate that at the current time, there are two breeding facilities that would have to erect additional fencing in order to be able to transfer deer to any deer breeder or release site in the state if the rules as proposed are adopted. Similarly, the proposed rules would require all new deer breeding facilities to be surrounded by a perimeter fence and this analysis would also apply to those facilities.

The proposed rules also would require the owners of prospective release sites to have a qualified person perform a fence inspection and attest to the site's compliance with the rules. The department estimates that this cost would be a minimum of \$1,000 and possibly greater, depending on the size of the release site, location, terrain, and other factors contributing to the amount of time necessary to conduct the inspection.

The proposed rules would require affected permittees who desire to transfer breeder deer anywhere in the state to conduct additional ante-mortem testing. The adverse economic impact of the proposed rules would consist of testing costs for a whole-herd ante-mortem test. Department records indicate that of the two facilities that would be immediately affected if the rules are adopted, only one would have to conduct testing in order to transfer anywhere in the state and that breeder's inventory as of this analysis is 65 deer. Therefore, the estimated adverse economic impact on that permittee would be approximately \$114,800 (assuming an average cost of \$350 per deer subjected to testing, as described below). The department cannot of course predict how

many additional deer breeders could be affected in the event of additional confirmations of CWD in free-range deer or susceptible species; however, department records indicate that the largest current inventory in any deer breeding facility authorized to transfer deer is 639 deer; thus, the adverse impact to that permittee (if CWD was confirmed within the specified proximity) would be approximately \$223,650. The department notes, for purposes of scaling, that eight percent of the breeding facilities in the state contain 200 or more deer, 17 percent contain between 100 and 199 deer, 24 percent contain between 50 and 100 deer, 34 percent contain between 10 and 49 deer, 17 percent contain fewer than 10 deer, and that 168 of the facilities are not authorized to transfer deer under rules currently in effect and unrelated to the rules as proposed. Of the 650 permitted deer breeders in Texas, 482 are currently designated MQ and 168 are designated NMQ under existing rules.

Additionally, affected permittees would not be able to transfer deer for a period of one year following the administration of the whole-herd test; therefore, affected permittees would experience prospective sales losses associated with that one-year period. As noted, permittees are not required to file or report financials to the department; thus, the loss of sales to any given permittee is unknown but could be many thousands of dollars. In any case, there are no permittees at the current time who would be affected.

The proposed rules would require permittees at trace-in breeding facilities and positive facilities to euthanize and test trace deer. The adverse economic impact to affected breeders would consist of the cost of euthanizing a deer (\$0 - \$500), the cost of a post-mortem test (\$70 per deer), and the possible loss of sales value (variable and unquantifiable). In the overwhelming majority of cases, this would involve fewer than five deer.

The proposed rules would require permittees who decline to accept a herd plan for a positive facility to depopulate the facility. The cost of a depopulation event is highly variable because of the number of factors, but in general consists of the cost of euthanizing the deer in the facility, post-mortem testing of those deer, and disposal. Based on department-conducted depopulation events the department estimates that depopulation costs would be between \$500 and \$700 per animal. Based on department records, that would result in a cost of \$447,300 at the facility with the largest number of deer at the current time. The department notes that permittees would only be required to conduct depopulation activities if they refuse to enter into a department herd plan; thus, depopulation is not mandatory. If the department depopulates a deer breeding facility pursuant to Parks and Wildlife Code, §43.953, the department is required to waive the associated costs pursuant to Parks and Wildlife Code, §43.955, if the department determines the permit holder did not cause the introduction of CWD into the facility or delay the detection of CWD at the facility through the violation of statutory or regulatory requirements related to deer breeding.

Under the Veterinary Practice Act, the samples necessary for ante-mortem testing can only be obtained by a licensed veterinarian. Because veterinary practice models vary significantly (flat rates, graduated rates, included travel costs, herd call rates, sedation costs, etc.) in addition to pricing structures determined by the presence or absence of economic competition in different parts of the state, the cost of ante-mortem testing is difficult to quantify; however, based on anecdotal information and an informal survey of knowledgeable veterinarians, the department estimates the cost of tonsillar or rectal biopsies at approximately

\$70-200 to as much as \$350 per head. It is important to note that ante-mortem procedures for CWD testing are relatively new, but the number of veterinarians with the training and expertise to perform them reliably is increasing; nevertheless, the fee structure for such procedures can best be described as unpredictably fluid.

The cost of a CWD test administered by the Texas A&M Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by a deer breeder is a minimum of \$25, to which is added a \$7 accession fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVMDL there is an additional \$20 sample collection fee, plus a \$20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair for ELISA (enzyme linked immunoassay) testing would be \$32, plus any veterinary cost (which the department cannot quantify), and the fee for submitting an entire head for testing would be \$72.

There could be an economic impact from the loss of the deer and any revenue that might have been realized from the sale of the deer to another breeder or to a release site for liberation. As noted previously, the department does not require that breeders report financial data. The economic impact on a deer breeder would depend on whether the deer breeder euthanizes deer to achieve testing requirements, and the number and type of deer euthanized. As noted above, the lost revenue from the euthanized deer could range from a few hundred dollars or less per deer to thousands of dollars per deer.

The proposed rules would prohibit the recapture of escaped breeder deer from facilities within five linear miles of a location where CWD has been confirmed in a free-range white-tailed deer or susceptible species or within 25 linear miles of a location where CWD has been confirmed in a free-range mule deer. The possible adverse economic impacts would consist of the loss to the deer breeder of the sales value of the escaped deer, which could range from hundreds of dollars to thousands of dollars.

The proposed rules would require applicants seeking a deer breeder permit for or who enlarge an existing facility at a location within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species, or within 25 miles of a location where CWD has been detected in a free-range mule deer, to conduct an environmental assessment, using department-approved methodology, of the exposure of the site to CWD prions. An environmental assessment typically consists of laboratory analysis of soil, plant, animal, fungi, and water samples taken at random distribution on a given site to determine if CWD prions are present. Because of the high variability of terrain, vegetation, wildlife densities, and water resources in Texas, the variety of appropriate testing methodologies available, and the size of the property in question, sampling strategies could vary widely; however, the department estimates the cost of the required assessment could range from \$100 per acre to \$500 per acre or more.

Several alternatives were considered to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to do nothing and maintain status quo. This alternative was rejected because the commission has directed the elimination of the current rules that establish CWD management zones and prescribe requirements for conduct within those zones.

One alternative considered was to repeal the existing CWD management zone rules and not replace them. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and captive cervid populations and the economies that depend upon them and the department has a statutory duty to protect and conserve the wildlife resources of the state.

Another alternative considered was to impose less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed rules are the minimum level at which the department could have any confidence that CWD is not being spread from locations where it is known to exist as a result of live animal movement. Less stringent testing requirements also could result in the spread of CWD to additional breeding facilities, which would then be designated NMQ and prohibited from transferring deer, which would, in turn, result in the total loss of sales opportunity. The department also believes that some sort of mitigation standard is necessary to provide some level of assurance to the hunting public, private landowners, and the regulated community that wildlife resources available for the use and enjoyment of present and future generations are in a healthy condition.

Another alternative considered was to implement an absolute prohibition on the movement of live deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, the department has a statutory obligation to issue deer breeder permits with all associated privileges to a qualified person. Therefore, this alternative was rejected because the department has a statutory obligation to allow such activities.

The department has determined that there will be no effect on rural communities, since the economic contribution of an individual deer breeder is not a significant driver of economic activities at either the macro or micro level.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (by creating provisions for risk mitigation in proximity to known CWD confirmations; and implementing additional testing requirements in positive facilities and facilities indirectly connected to facilities where CWD has been confirmed); not expand or limit an existing regulation limit; repeal regulations (by eliminating rules establish CWD management zones); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Alan Cain, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 480-4038; email: alan.cain@tpwd.texas.gov or via the department website at <https://tpwd.texas.gov/business/feedback/meetings>

## SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

### DIVISION 1. CHRONIC WASTING DISEASE (CWD)

#### 31 TAC §§65.80, 65.81, 65.88

The amendments and new section are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals, Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments and new section affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

#### §65.80. Definitions.

The words and terms used in this division shall have the meanings assigned by §65.90 of this title (relating to Definitions), [The following words and terms, when used in this subchapter, shall have the following meanings;] unless the context clearly indicates otherwise. All other words in this subchapter shall have the meanings assigned by Parks and Wildlife Code.

[(1) Containment Zone (CZ)—A department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable.]

[(2) Herd Plan—A set of requirements for disease testing and management developed by the department and TAHC for a specific facility.]

[(3) Surveillance Zone (SZ)—A department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected.]

[(4) Susceptible species—Any species or part of a species of wildlife resource that is susceptible to CWD.]

#### §65.81. Risk Mitigation Provisions.

##### (a) General.

(1) Except as provided in this section and §65.87 of this title (relating to Exception), no person shall conduct, authorize, or cause any activity involving the movement of a susceptible species under a

permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1 within five linear miles of a location where CWD has been confirmed in a free-range white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been confirmed in a free-range mule deer. Such prohibited activity includes but is not limited to transportation, introduction, removal, authorizing or allowing the transportation, introduction, or removal of, or causing the transportation, introduction, or removal of a live susceptible species.

(2) In the event of a conflict between this section and any other provision of this subchapter, this section prevails.

(3) Once implemented, the provisions of this division continue in effect at any given location until the department has determined, using the best available science, that CWD is not likely present within the applicable distance of a free-range positive.

##### (b) Breeder Deer.

(1) The provisions of this subsection apply to a breeding facility any part of which is within five linear miles of a location where CWD has been confirmed in a free-range white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been confirmed in a free-range mule deer. The department will notify a permittee immediately upon determining that the permittee's facility is subject to the provisions of this subsection.

(2) A breeding facility described by paragraph (1) of this subsection may, provided the facility is designated MQ:

(A) receive deer from any breeding facility in this state authorized to transfer deer; and

(B) transfer deer only to release sites or breeding facilities authorized to receive deer the entirety of which are completely within five linear miles of the location where CWD has been confirmed in white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been confirmed in a mule deer.

(3) A breeding facility described by paragraph (1) of this subsection is prohibited from transferring deer except as provided under paragraph (2) of this subsection unless:

(A) the applicable facility infrastructure and fencing standards described in §65.605 of this title (relating to Facility Standards and Care of Deer) have been in place for at least one year prior to being notified by the department as required by paragraph (1) of this subsection; and

(B) following the notification required by paragraph (1) of this subsection, a whole-herd ante-mortem test of all test-eligible deer in the facility is conducted with test results of "not detected" for every deer, except as provided in subparagraph (D) of this paragraph, after which deer may be transferred to and from the facility as provided in this subchapter; or

(C) if the applicable facility infrastructure and fencing standards described in §65.605 of this title have not been implemented or have been in place for less than one year prior to being notified by the department as required by paragraph (1) of this subsection:

(i) a whole-herd ante-mortem test of all test-eligible deer in the facility is conducted no earlier than one year following the completion of the applicable facility infrastructure and fencing standards described in §65.605 of this title with test results of "not detected" for every deer, except as provided in subparagraph (D) of this paragraph; and

(ii) one year has elapsed from the date of the whole herd test required by clause (i) of this subparagraph has been completed, after which deer may be transferred to and from the facility as provided in this subchapter.

(D) The department will not accept inconclusive ante-mortem test results (including, but not limited to "insufficient follicles") for more than 10 percent of the total number of deer tested under the provisions of subparagraph (B) or (C) of this paragraph.

(4) A breeding facility that as of the effective date of this subsection was subject to the restrictions provided by §65.81(2) of this title (relating to Containment Zones: Restrictions) in effect at that time may transfer deer to any breeding facility or release site authorized to receive deer if:

(A) the facility meets the applicable facility infrastructure and fencing standards described in §65.605 of this title; and

(B) the facility is designated MQ.

(5) The department will issue an initial permit for a facility located within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species, or within 25 miles of a location where CWD has been detected in a free-range mule deer; however:

(A) authorization for possession of deer is contingent upon the completion, at the applicant's expense, of an assessment, utilizing department-approved methodologies, of environmental exposure to CWD prions at the location of the prospective facility or, if the site was ever the location of a permitted facility, within the perimeter of the previously permitted facility; and

(B) for a period of three years following the initial introduction of deer to the facility, each deer transferred into or born in the facility have been in the facility for a minimum residency period of 20 continuous months, after which the deer may be transferred to any facility authorized to receive deer as provided in this subchapter. After the three-year period established by this subparagraph has elapsed, the department may waive the 20-month residency requirement upon an epidemiological determination by the department that CWD prions are not present in the facility.

(6) A breeding facility described by paragraph (5) of this subsection may, provided the facility is designated MQ:

(A) receive deer from any breeding facility in this state authorized to transfer deer; but

(B) except as provided in paragraph (5)(B) of this subsection, may transfer deer only to release facilities that are:

(i) authorized to receive deer; and

(ii) completely within five linear miles of the location where CWD has been confirmed in white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been confirmed in a mule deer.

(7) The department will issue a new breeder permit to any qualified individual, but will not authorize the possession of breeder deer at any location where a susceptible species has tested positive for CWD or where CWD prions are determined to exist.

(8) Deer that escape from a breeding facility any part of which is within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been detected in a free-range mule deer, may not be recaptured and/or returned to a breed-

ing facility except as expressly authorized in writing by the department or in a herd plan.

(9) The department may authorize the expansion of an existing facility located within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species, or within 25 miles of a location where CWD has been detected in a free-range mule deer; however, the requirements of paragraph (5) and (6) of this subsection apply to the entirety of the facility as enlarged and the entire facility will be treated as a new facility.

(c) Deer Management Permit (DMP).

(1) The department may authorize DMP activities on a property within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species or within 25 linear miles of a location where CWD has been detected in a free-range mule deer, provided the owner of the property agrees, in writing, prior to the issuance of the DMP, to subject either 100 percent of hunter-harvested deer or 15 deer, whichever value is lower, to testing performed by an accredited testing laboratory on the medial retropharyngeal lymph nodes from each harvested deer, which must be collected by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department. Tissue samples shall be submitted to an accredited laboratory within two weeks of harvest.

(A) The testing required by this paragraph shall be:

(i) conducted on test-eligible deer taken on the property for which the DMP was issued, during the hunting season for which the DMP was issued (i.e., that coincides with the period of validity of the DMP); and

(ii) at the expense of the permittee, including tissue collection and submission.

(B) A permittee subject to the provisions of this paragraph shall maintain a harvest log during the period of validity of the permit. The harvest log shall be maintained daily and shall meet the requirements of this subparagraph. For each deer harvested on the DMP property, the landowner must, on the same day the deer is harvested, legibly enter the following information in the daily harvest log:

(i) the name and hunting license of the person who harvested the deer;

(ii) the date the deer was harvested;

(iii) the species (white-tailed or mule deer) and type of deer harvested (buck or antlerless);

(iv) any alphanumeric identifier tattooed on the deer;

(v) the RFID tag number of any RFID tag affixed to the deer; and

(vi) any other identifier and identifying number on the deer.

(C) The daily harvest log shall be made available upon request to any department employee acting in the performance of official duties.

(D) The daily harvest log shall be on a form provided or approved by the department and shall be retained for a period of one year following submission and acceptance by the department.

(2) The harvest log and test results required by this subsection shall be submitted to the department via an application specified by the department for that purpose by April 1 immediately following the close of the hunting season for which the DMP was issued.

(3) For a property on which zero deer were harvested in the hunting season for which a DMP was issued, a subsequent DMP shall not be issued until the permittee has submitted test results of "not detected" for 15 hunter-harvested deer from the property.

(4) For a property on which 15 or fewer deer were harvested in the hunting season for which a DMP was issued, a subsequent DMP shall not be issued until the permittee has submitted test results of "not detected" equal to the number of deer harvested from the property.

(5) For a property on which more than 15 deer were harvested in the hunting season for which a DMP was issued, a subsequent DMP shall not be issued until the permittee has submitted "not detected" test results for 15 hunter-harvested deer from the property.

(6) The department will not issue a DMP for:

(A) a property where CWD is confirmed; or

(B) a property that is a release facility epidemiologically connected to a positive facility.

§65.88. *Deer Carcass Movement Restrictions.*

~~(a) Except as provided in this section, no person may transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds except for:~~

~~[(1) meat that has been cut up and packaged (boned or filleted);]~~

~~[(2) a carcass that has been reduced to quarters with no brain or spinal tissue present;]~~

~~[(3) a cleaned hide (skull and soft tissue must not be attached or present);]~~

~~[(4) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all internal soft tissue;]~~

~~[(5) finished taxidermy products;]~~

~~[(6) cleaned teeth; or]~~

~~[(7) tissue prepared and packaged for delivery to and use by a diagnostic or research laboratory.]~~

(a) ~~[(b)]~~ In addition to the provisions of §65.10 of this title (Possession of Wildlife Resources) and except as may be otherwise prohibited by this subchapter, a department herd plan, or a quarantine or hold order issued by TAHC, a white-tailed deer or mule deer or part of a white-tailed or mule deer killed in this state or a susceptible species or part of a susceptible species harvested outside of Texas may be transported from the location where the animal was killed as provided in this section. ~~The [to a final destination. Following final processing at a final destination, the]~~ parts of the animal not retained for cooking, storage or taxidermy purposes shall be disposed of as quickly as practicable by one of the following methods ~~[only as follows]:~~

(1) (No change.)

(2) interment, to be accomplished by the placement of the carcass parts at a depth of no less than three feet below the natural surface of the ground, followed immediately by the placement of earthen material in such as fashion as to completely cover the carcass parts with at least three vertical feet of earthen material [and covered with at least three feet of earthen material]; or

(3) return [returned] to the property where the animal was harvested for disposal.

~~(b) The rendering of carcass parts is not a lawful method of disposal.~~

~~(c) The carcass of a white-tailed or mule deer may be deboned at any location[;] prior to transportation to a final destination, [at the location where the animal was taken;] provided:~~

~~(1) (No change.)~~

~~(2) proof-of-sex and any required tag is retained and accompanies each package, bag, or container of meat; and~~

~~(3) the remainder of the carcass is disposed of in accordance with the provisions of subsection (a) of this section. Carcasses and carcass parts not disposed of immediately shall be protected from being scattered, consumed, or removed until disposal occurs [remains at the location where the animal was harvested, except that a head may be transported to a taxidermist as provided in subsection (f) of this section].~~

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

~~(d) It is an offense for any person to dispose of those parts of an animal that the possessor does not retain for cooking, storage, or taxidermy purposes except as follows:~~

~~(1) (No change.)~~

~~(2) interment, to be accomplished by the placement of the carcass parts at a depth of no less than three feet below the natural surface of the ground, followed immediately by the placement of earthen material in such as fashion as to completely cover the carcass parts with at least three vertical feet of earthen material [and covered with at least three feet of earthen material]; or~~

~~(3) return [returned] to the property where the animal was harvested.~~

~~(e) If a person takes a susceptible species in a CZ or SZ within which the department has not designated a mandatory check station, the person shall transport the head of the susceptible species to the nearest check station established by the department for the CZ or SZ in which the susceptible species was taken, provided such transport occurs immediately upon leaving the CZ or SZ where the animal was taken and occurs via the most direct route available.]~~

~~(f) The skinned or unskinned head of a susceptible species from a CZ or SZ, other state, Canadian province, or other place outside of Texas may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of prior to being transported to Texas, or disposed of in a landfill in Texas permitted by TCEQ to receive such wastes.]~~

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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James Murphy

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For further information, please call: (512) 389-4775



31 TAC §§65.81 - 65.85

The repeals are proposed under the authority of Parks and Wildlife Code, Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed repeals affect Parks and Wildlife Code, Chapters 42 and 43.

§65.81. *Containment Zones; Restrictions.*

§65.82. *Surveillance Zones; Restrictions.*

§65.83. *Special Provisions.*

§65.84. *Powers and Duties of the Executive Director.*

§65.85. *Check Stations.*

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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## DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

### 31 TAC §§65.90, 65.92, 65.94, 65.95, 65.99

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has

not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. *Definitions.*

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

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

(6) ~~CWD-positive~~--An animal that has received a "detected" or "positive" CWD test result confirmed by the National Veterinary Services Laboratory.

(7) ~~[(6)]~~ CWD-positive facility (positive facility)--Any facility in or on which CWD has been confirmed.

(8) ~~[(7)]~~ Deer breeder--A person who holds a deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(9) ~~[(8)]~~ Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder's Permit).

(10) ~~[(9)]~~ Department (department)--Texas Parks and Wildlife Department.

(11) ~~[(10)]~~ Deer Management Permit (DMP)--A permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation.

(12) ~~[(11)]~~ Exposed deer--A deer that meets any of the following criteria:

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

(13) ~~[(12)]~~ Exposure--The period of time that has elapsed following the introduction of an exposed deer to a breeding facility.

(14) ~~[(13)]~~ Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, TTP permit, or DMP, including release sites and/or trap sites.

(15) ~~[(14)]~~ Free-range deer--A deer that is not a breeder deer.

(16) ~~[(15)]~~ Herd Plan--A set of requirements for disease testing and management developed by the department and TAHC for a specific facility.

(17) ~~[(16)]~~ Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(18) ~~[(17)]~~ Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(19) ~~[(18)]~~ Inconclusive--A test result that is neither "positive" nor "not detected" on the basis of clinical deficiency.

(20) ~~[(19)]~~ "Insufficient follicles"--A test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result.

(21) [(19)] Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(22) [(20)] Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(23) [(21)] Last known exposure--The last date a deer in a trace-out or trace-in breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer.

(24) [(22)] Liberated deer--A free-ranging deer that bears evidence of having been a breeder deer, [liberated] including, but not limited to, a tattoo (including partial or illegible tattooing), or evidence of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue), electronic identification devices, or any other signs that the deer was at any time a breeder deer.

(25) Location of detection--The exact geographic location, to the extent that it can be determined, at which a deer or susceptible species confirmed to be positive for CWD died.

(26) [(23)] Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(27) Not available/unavailable for testing--For a Category B trace-out deer breeding facility, a deer that is no longer present in a facility and cannot be found or the whereabouts of which are otherwise unknown.

(28) [(24)] Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

(29) Positive breeding facility--A deer breeding facility where CWD has been confirmed to exist.

(30) [(25)] Post-mortem test--A CWD test performed on a dead deer.

(31) [(26)] Properly executed--A form or report required by this division on which all required information has been entered.

(32) [(27)] Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer has been accurately reported as required by this division.

(33) [(28)] Release--The act of liberating a deer from captivity. For the purposes of this division the terms "release" and "liberate" are synonymous.

(34) [(29)] Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(35) [(30)] Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(36) [(31)] RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(37) [(32)] Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(38) Susceptible species--Any cervid species or part of a cervid species that is susceptible to CWD.

(39) [(33)] Suspect--An initial CWD test result of "detected" that has not been confirmed.

(40) [(34)] TAHC--Texas Animal Health Commission.

(41) [(35)] Test-eligible--

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

(42) [(36)] Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(43) [(37)] Trace deer--A deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result.

(44) [(38)] Trace-in breeding facility--A breeding facility that meets either of the following criteria:

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

(45) [(39)] Trace-out breeding facility--A breeding facility that has received an exposed deer that was in a CWD-positive deer breeding facility.

(46) [(40)] Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(47) [(41)] Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds).

(48) [(42)] Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(49) [(43)] TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

(50) Whole-herd test--The administration of an ante-mortem test to the entirety of test-eligible deer in the inventory of a breeding facility.

#### §65.92. CWD Testing.

(a) (No change.)

(b) Except as provided in §65.95(c)(7) [§65.95(e)(6)] of this title (relating to Movement of Breeder Deer) or subsection (d) of this section, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue with at least six lymphoid follicles collected within eight months of submission by a licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC from a live deer that:

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

(c) Except as provided in §65.81(c)(1) of this title (relating to CWD Risk Mitigation Provisions), a [A] post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex and medial retropharyngeal lymph node of a test-eligible mortality, and may be collected only by a qualified licensed veterinarian,



TAHC-certified CWD sample collector, or other person approved by the department.

(d) - (l) (No change.)

§65.94. *Breeding Facility Minimum Movement Qualification.*

(a) - (g) (No change.)

(h) Deer required to be reported to the department under §65.605 of this title (relating to ~~[Holding]~~ Facility Standards and Care of Deer) are considered to be mortalities for the purposes of this division until lawfully recaptured. A deer that is not recaptured will be treated as a mortality that occurred within the facility from which the escape is required to be reported.

(i) (No change.)

§65.95. *Movement of Breeder Deer.*

(a) - (b) (No change.)

(c) Release Sites; Release of Breeder Deer.

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

(4) The department will not authorize the liberation of breeder deer at a release site registered in TWIMS following the effective date of this subsection unless the owner of the release site submits to the department a letter of endorsement by a person authorized by the department to conduct fence inspections under the provisions of §65.603 of this title (relating to Application and Permit Issuance) stating that the person has personally conducted an on-site inspection at the facility identified in the application and affirming that the release site is surrounded by a perimeter fence meeting the requirements of paragraph (3) of this subsection. This paragraph does not apply to release sites that have received deer prior to the effective date of this paragraph. It is an offense for any person the department has authorized as a facility inspector to submit the letter of endorsement required by this paragraph if the person has not personally conducted an onsite inspection at the facility.

(5) ~~[(4)]~~ No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(6) ~~[(5)]~~ The owner of a release site where deer from a facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities) or deer from a CWD-positive facility have been released shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(7) ~~[(6)]~~ No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) (No change.)

(B) the deer is at least six months of age at the time the test sample required by this paragraph is collected; ~~and[-]~~

(C) the deer bears the identification prescribed by Parks and Wildlife Code, §43.3561, and any applicable herd plan.

(D) A breeder deer that has been released is no longer a breeder deer; however, it is an offense for any person to remove the identification tag required by this section from such deer except as a consequence of reducing the deer to possession following lawful take under a hunting license.

(E) ~~[(C)]~~ An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title may be

utilized a second time to satisfy the requirements of this paragraph, provided the test sample was collected as provided in subparagraph (A) of this paragraph.

(F) ~~[(D)]~~ A facility from which deer are transferred in violation of this paragraph becomes automatically NMQ and any further transfers are prohibited until the permittee and the owner of the release site have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

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

§65.99. *Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities.*

(a) Effectiveness.

~~[(+)]~~ To the extent that any provision of this section conflicts with any provision of this division, the provisions of this section prevail.

~~[(2) The provisions of Division 4 of this subchapter apply to any facility designated by the department as a Category A or Category B trace-out breeding facility, or trace-in breeding facility subject to the provisions of this section.]~~

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

(e) Category B trace-out breeding facility.

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

(3) In lieu of the testing requirements prescribed by paragraph (2)(A) and (2)(E) of this subsection, a permittee may request the development of a custom testing plan as provided in subsection (h) of this section; provided, however, the permittee must comply with paragraph (2)(B) - (D) of this ~~subsection [section]~~.

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

(f) The department shall, provided the provisions of this subchapter do not otherwise prevent restoration of MQ status, restore MQ status to a breeding facility that has been designated NMQ under the provisions of subsection (e) of this section as provided in this paragraph.

(1) MQ status may be restored for a facility in which all trace deer available for testing are tested in accordance with subsection (e) of this section and trace deer unavailable for testing were received by the trace facility less than 36 months prior to the date of detection in the positive breeding facility, provided:

(A) the facility was fenced as specified in §65.605 of this title (relating to Facility Standards and Care of Deer) prior to notification of Category B status;

(B) a minimum of 25 percent of the total number of test-eligible deer in the facility have been tested (ante-mortem or post-mortem) with test results of "not detected" during each of the two reporting years immediately preceding notification of Category B status;

(C) all unavailable trace-out deer were in the facility for at least 20 months prior to being the subject of an ante-mortem test with results of "not detected"; and

(D) beginning two reporting years prior to the designation as a trace facility, the facility has been in continuous compliance with all requirements of:

(i) Parks and Wildlife Code, Chapter 43, Subchapter

L;

(ii) this subchapter; and

(iii) Subchapter T of this chapter.

(E) Compliance with the requirements of this subsection does not relieve any person of any obligation or requirement of a herd plan.

(2) MQ status may be restored for a facility in which:

(A) all trace deer available for testing are tested in accordance with subsection (e) of this section; and

(B) trace deer unavailable for testing:

(i) were received by the trace facility not less than 36 months prior to the date of detection in the positive breeding facility; and

(ii) have been the subject of an ante-mortem "not detected" test result within 60 months prior to the date of detection in the positive breeding facility and through the time period the trace deer is no longer available for testing;

(C) the facility has been fenced as specified in §65.605 of this title prior to the notification of Category B status; and

(D) beginning two reporting years prior to the designation as a trace facility, the facility was in continuous compliance with all requirements of:

(i) Parks and Wildlife Code, Chapter 43, Subchapter L;

(ii) this subchapter; and

(iii) Subchapter T of this chapter.

(E) Compliance with the requirements of this subsection does not relieve any person of any obligation or requirement of a herd plan.

(g) [(f)] Trace-in breeding facility. Immediately upon notification by the department of trace-in facility status, a facility is automatically NMQ.

(1) - (6) (No change.)

(h) [(g)] Custom Testing Plan. Within seven days of being notified by the department that a breeding facility has been designated a Category A, Category B, or trace-in facility, a permittee may, in lieu of meeting the applicable testing requirements of subsections (d) - (g) [(d) - (f)] of this section, request the development of a custom testing plan by the department in consultation with TAHC based upon an epidemiological assessment conducted by the department and TAHC. A custom testing plan under this subsection is not valid unless it has been approved by the department and TAHC.

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

(i) [(h)] Positive Facility.

(1) Upon notification by the department that CWD is suspected in a deer in a facility, the facility is automatically NMQ and the permittee shall:

(A) within 14 days, conduct and submit to the department a pen-by-pen inventory of all deer within the breeding facility, including the location of the pen in which the suspected positive deer was kept at the time the suspect CWD detection occurred;

(B) immediately cease all internal movement of animals between pens within the facility, unless such movement is expressly authorized in writing by the department;

(C) [(4)] euthanize the positive deer within seven days of confirmation of the positive test result, if the detection was a result of antemortem testing;

(D) euthanize all trace deer within seven days of confirmation of the positive test result, unless authorized by the department or in a herd plan;

(E) [(2)] submit post-mortem test samples from breeder deer euthanized under this subsection within one business day of euthanasia, to include both ears and the identification tag required under Parks and Wildlife Code, Chapter 43, Subchapter L; and

(F) [(3)] inspect the facility daily for mortalities; and

(i) [(A)] immediately report each mortality to the department;

(ii) [(B)] immediately collect test samples from all test-eligible mortalities that occur within the facility; and

(iii) [(C)] submit samples collected under this subsection for post-mortem testing within one business day of the discovery of the mortality.

(2) Unless otherwise provided in writing by the department, a permittee must enter into a herd plan within six months of being designated a positive facility or agree to conduct a depopulation of the breeder deer within the facility.

(3) Fencing meeting the specifications in §65.605 of this title shall be installed around a positive facility no later than the completion of the herd plan and removal of a quarantine unless the owner of the facility conducts a complete depopulation of the breeder deer.

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## SUBCHAPTER T. DEER BREEDER PERMITS

### 31 TAC §§65.602 - 65.605, 65.610, 65.611

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.602. *Permit Requirement and Permit Privileges; General Provisions.*

(a) (No change.)

(b) In accordance with Parks and Wildlife Code, §43.357, a person who possesses a valid deer breeder's permit may:

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

(4) except as provided by this subchapter or Subchapter B of this chapter, recapture lawfully possessed breeder deer that have been marked in accordance with Parks and Wildlife Code, §43.3561 that have escaped from a permitted facility.

(c) (No change.)

(d) A deer breeding facility shall contain either white-tailed deer or mule deer, as authorized by the permit. [The provisions of this subsection take effect April 1, 2021].

~~[(e) Except for deer that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, no deer, livestock, exotic livestock, or similar animals may be present in, confined in, or have access to a deer breeding facility other than the deer listed on the reconciled herd inventory for the facility reported to the department; however, infrastructure such as chutes and pens, within a permanent structure identified on a facility diagram required under this subchapter may be used to temporarily retain and handle animals other than white-tailed or mule deer held under provisions of a deer breeder permit, provided the animals are members of species that are not CWD-susceptible species. The provisions of this subsection take effect April 1, 2021.]~~

§65.603. Application and Permit Issuance.

(a) An applicant for an initial deer breeder's permit shall submit the following to the department:

(1) (No change.)

(2) a letter of endorsement by a person authorized by the department to conduct facility and fence inspections stating that the person has personally conducted an on-site inspection at the facility identified in the application and affirming that the facility identified in the application:

(A) (No change.)

(B) is surrounded by a perimeter fence meeting the specifications of §65.605 of this title (relating to Facility Standards and Care of Deer);

(C) [~~(B)~~] contains infrastructure appropriate for the humane treatment of deer, including for the provision of adequate food, a continuous supply of water, and ample cover or shelter;

(D) [~~(C)~~] is adequate for the lawful conduct of activities governed by this subchapter;

(E) [~~(D)~~] has been secured in such a fashion to prevent ingress to and egress from the facility by any deer, livestock, exotic livestock, or similar animals; and

(F) [~~(E)~~] no deer, livestock, exotic livestock, or similar animals are present or confined within the facility;

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

(b) For the purposes of this subchapter, an authorized facility/fence [~~facility~~] inspector is a person not employed by the department or the permittee in any other capacity who:

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

(3) has not, according to department records, failed to maintain a reconciled herd, as defined by §65.90 [~~§65.90(27)~~] of this title (relating to Definitions), within the five years immediately preceding any inspection conducted for purposes of satisfying the requirements of this subchapter; and

(4) (No change.)

(c) - (i) (No change.)

§65.604. Disease Monitoring.

The provisions of Subchapter B [~~Division 2~~], of this chapter apply to the possession and movement of deer pursuant to a permit issued under this subchapter.

§65.605. [ ~~Holding~~] Facility Standards and Care of Deer.

(a) Except as provided in subsection (h) of this section, the [~~The~~] entire perimeter [~~fence~~] of a permitted deer breeding facility [~~containing breeder deer~~], including medical facilities, shall be within a fence of no less than seven feet in height, which [~~and~~] shall be constructed of department-approved woven wire, field fence, net mesh, chain link or welded wire that will retain breeder deer. The fence required by this subsection shall at no point be within:

(1) five feet of a pen or other structure containing breeder deer; or

(2) ten feet of the exterior fence of another deer breeding facility.

(b) A permittee shall submit to the department a letter of confirmation by a person authorized by the department to conduct facility inspections under the provisions of §65.603 of this title (relating to Application and Permit Issuance), that the perimeter fence required by subsection (a) of this section exists and is compliant with the requirements of this section.

(c) A deer breeding facility consists of the entirety of the area within the fence required by subsection (a) of this section.

(d) Within the perimeter fence required by subsection (a) of this section, breeder deer shall at all times be kept completely contained within internal fencing meeting the requirements of subsection (a) of this section, except as provided by subsection (e)(2) of this section.

(e) Within the space or area between the fence required by subsection (a) of this section and the fencing required by subsection (d) of this section:

(1) no supplemental food or water is permitted; and

(2) no animals of any kind shall have free-choice access to or be present, except what is necessary for the limited, transient period of time necessary to drive or move breeder deer in an immediate fashion between pens or structures within the facility. If breeder deer are moved within a facility under the provisions of this subsection, a person must be present and actively engaged in urging or driving the breeder deer in a direct and prompt fashion to the destination pen. It is an offense for breeder deer to be present in the space or area between the two fences of the double fence required by this section if a person is not present and actively engaged in keeping the breeder deer in constant motion from the source pen to the destination pen.

(f) Except as provided in this section, no deer, livestock, exotic livestock, or similar animals may be present in, confined in, or have access to a deer breeding facility other than:

(1) the breeder deer reflected on the herd inventory for the facility; and

(2) deer that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

(g) An edifice, structure, building, working facility, barn, or similar infrastructure identified on a facility diagram required under this subchapter may be used on a temporary basis to handle animals other than susceptible species, provided the animals are at no point commingled with deer within the facility or allowed to access any space within the facility that is ever occupied or used by deer within the facility other than the edifice, structure, building, working facility, barn, or

similar infrastructure used temporarily handle the animals. For the purposes of this subsection, "temporary" means only the amount of time necessary to accomplish a specific short-term task and does not include any longer period of time or any period of time during which animals are unattended. The provisions of this subsection apply only to a facility permitted prior to the effective date of this subsection; following the effective date of this subsection, all facilities shall be designed in such a fashion as to provide access to handling infrastructure that is external to the breeding facility.

(h) An edifice, structure, building, working facility, barn, or similar infrastructure that is or is to be used or occupied by animals other than susceptible species is not required to be wholly within and separate from the perimeter fence required by subsection (a) of this section, but must be:

(1) configured and constructed in such a fashion so as to prevent direct contact of any kind (i.e., nose-to-nose contact through a fence) between deer within the facility and susceptible species outside the facility; and

(2) secured when not in use so as to prevent susceptible species from outside the facility from entering the edifice, structure, building, working facility, barn, or similar infrastructure.

(i) All deer breeding facilities located on a single property shall be separated by at least ten feet and facilities are prohibited from sharing infrastructure for any reason.

(j) The provisions of subsection (a)(2) and (i) of this section apply to all facilities on the effective date of this subsection; all other provisions of this section apply only to new facilities permitted on or after the effective date of this subsection. The provisions of this section in effect on the date this subsection took effect continue in force and effect for permits issued prior to the effective date of this subsection but do not control over the provisions of §65.81 of this title (relating to CWD Risk Mitigation Provisions).

(k) An indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the breeder deer in captivity.

(l) [(b)] A permittee shall ensure that deer have access to adequate food, a continuous supply of water, and ample cover or shelter.

(m) [(e)] Immediately upon discovering the escape of breeder deer from a facility, a permittee shall notify the department. The notification shall include a detailed description of the permittee's intended actions to recapture the escaped deer, including the methods that will be employed to recapture the deer and the dates and times that recapture will be attempted. The permit holder shall notify the department daily of the efforts to capture the escaped deer until the escaped deer are captured. If after ten days the permittee is unable to capture escaped breeder deer that have been reported in accordance with this subsection, the deer may not be recaptured or held in a deer breeding facility unless specifically authorized in writing by the department for purposes of disease management.

(n) [(d)] If a permit holder is unable to recapture escaped breeder deer reported as provided under subsection (m) [(e)] of this section and the breeding facility is designated as NMQ at the time of or subsequent to the time of escape under the provisions of Subchapter B, Division 2, of this chapter, the property on which the deer breeding facility is located and any tract of land contiguous to the property under common ownership shall be subject to a department disease-testing plan requiring mandatory CWD testing and reporting.

*§65.610. Transfer of Deer.*

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

(e) Release.

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

(5) It is an offense for any person to:

(A) release, cause, allow, or participate in the release of a breeder deer that does not bear the identification prescribed by Parks and Wildlife Code, §43.3561, and any applicable herd plan; or

(B) remove the identification tag required by this section from such deer except as a consequence of reducing the deer to possession following lawful take under a hunting license.

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

*§65.611. Prohibited Acts.*

(a) - (h) (No change.)

(i) It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(m) [§65.605(d)] of this title (relating to [Holding] Facility Standards and Care of Deer).

(j) (No change.)

(k) Except as provided in this subchapter [under §65.602(e) of this title], no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

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

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

Filed with the Office of the Secretary of State on December 9, 2024.

TRD-202405918

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 19, 2025

For further information, please call: (512) 389-4775



## CHAPTER 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Department (TPWD) proposes amendments to 31 TAC §69.4 and §69.8, concerning Endangered, Threatened, and Protected Native Plants, and §69.304 and §69.305, concerning Scientific, Educational, and Zoological Permits. The proposed amendments would make corrections to internal citations and update scientific names and organizational titles. The proposed amendments are nonsubstantive.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §69.4, concerning Renewal, corrects an erroneous internal citation.

The proposed amendment to §69.8, concerning Endangered and Threatened Plants, would update the scientific names for

two species of plants. From time to time the consensus of the scientific community with respect to taxonomic differentiation changes, necessitating updates to department rules to reflect that fact.

The proposed amendment to §69.304, concerning Qualifications, and §69.305, concerning Reports, would update the name of an accrediting organization.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be accurate rule language.

There will be no adverse economic effect on persons required to comply with the rules, as the proposed amendments are non-substantive.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the proposed amendments are nonsubstantive; therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals

subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

## SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

### 31 TAC §69.4, §69.8

The amendment is proposed under the authority of Parks and Wildlife Code, §88.006, which requires the department to adopt regulations to administer the provisions of this chapter, including regulations to provide for procedures for identifying endangered, threatened, or protected plants.

The proposed amendments affect Parks and Wildlife Code, Chapter 88.

#### §69.4. *Renewal.*

The department may require information in addition to that required by paragraphs (1)-(3) [(4)] of this section. Scientific plant permits may be renewed, provided:

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

#### §69.8. *Endangered and Threatened Plants.*

(a) The following plants are endangered:

Figure: 31 TAC §69.8(a)  
[Figure: 31 TAC §69.8(a)]

(b) The following plants are threatened:

Figure: 31 TAC §69.8(b)  
[Figure: 31 TAC §69.8(b)]

(c) (No change.)

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

### 31 TAC §69.304, §69.305

The amendments are proposed under Parks and Wildlife Code, §43.002, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The proposed amendments affect Parks and Wildlife, Chapter 43.

§69.304. *Qualifications.*

(a) Zoological collection permits shall be issued only to agents of entities that are either:

(1) accredited by the Association of Zoos and Aquariums [~~American Zoo and Aquarium Association~~] (AZA); or

(2) (No change.)

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

§69.305. *Facility Standards.*

(a) All live birds or animals possessed under an educational display permit, or under a zoological collection permit in a facility that is not accredited by the AZA [~~American Zoo and Aquarium Association~~] shall be kept in enclosures meeting or exceeding the standards set forth in this section.

(b) - (g) (No change.)

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James Murphy

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 15. TEXAS FORENSIC SCIENCE COMMISSION

#### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission (Commission) proposes amendments to: (1) 37 Texas Administrative Code Chapter §651.202, Definitions; (2) §615.207, Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training; and (3) §651.8, Full Commission Accreditation, to add a definition for "inactive" forensic analyst and forensic technician licenses. The rule amendments further clarify the accredited laboratory's obligation and the licensee's obligation to report employment changes to the Commission in instances where Commission-licensed forensic analysts and forensic technicians experience changes in employment with an accredited laboratory. Under the current accredited laboratory rules, there is no express laboratory obligation to report changes in employment for Commission-licensed employees. The rule changes also add the word "forensic" to the Commission's "technician" definition for clarity.

Background and Justification. The proposed amendments add a definition for "inactive" forensic analyst and forensic technician

licenses to provide clarity to the meaning of the "inactive" status. Under the current rules, there is not a clear definition of the "inactive" designation for a license. Licensees are deemed inactive when they are no longer performing forensic analysis on behalf of an accredited laboratory or if their license expires and they still have ninety (90) days to reinstate the license. The rule amendments further clarify the accredited laboratory and licensee's two-fold obligation to report employment changes to the Commission in instances where Commission-licensed forensic analysts and forensic technicians experience changes in employment with an accredited laboratory, so the Commission is able to accurately reflect reported license statuses in its public database. Under the current accredited laboratory rules, there is no express requirement for laboratories to report changes in employment for Commission-licensed employees and license "active" or "inactive" statuses may be reflected inaccurately when there are changes in employment by a licensee. The proposed amendments also make minor grammatical changes.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

Local Employment Impact Statement. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. 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.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is better clarity for stakeholders and the public on the meaning of the "inactive" license designation in the Commission's forensic analyst licensing program rules and the laboratory and licensee's obligation to report changes in employment.

Fiscal Impact on Small and Micro-businesses and Rural Communities. There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule

does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; (4) the proposed rule changes do not require any fees; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand, limit, or repeal an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule has no effect on the state's economy.

**Environmental Rule Analysis.** The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 24, 2025 to be considered by the Commission.

## SUBCHAPTER A. ACCREDITATION

### 37 TAC §651.8

**Statutory Authority.** The rule amendments are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §3-a and its authority to license forensic analysts under §4-a(b).

**Cross reference to statute.** The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.8. [Full] Commission Accreditation and Accredited Laboratory Reporting Requirements.

(a) Issuance and renewal. The Commission may issue or renew accreditation under this section.

(b) Application. An applicant for [full] Commission accreditation must complete and submit to the Commission a current Laboratory Accreditation Form and attach copies of the following:

(1) an accreditation certificate and letter of notification of accreditation from a recognized accrediting body; and

(2) each document provided by the recognized accrediting body that identifies the discipline or category of analysis for which the laboratory has received accreditation and any limitation or restriction regarding that accreditation.

(c) Additional information. The Commission may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) Reports to the Commission:

(1) If accredited by ANAB, a laboratory must provide the Commission with a copy of each accreditation assessment report[;] including, but not limited to, any on-site surveillance assessment report, off-site surveillance assessment report, scope extension assessment report, Federal Bureau of Investigation Quality Assurance Standards Audit for Forensic DNA Testing Laboratories report, ABFT Checklist report, as well as any management system's internal or external audit report, or any other reports required pursuant to compliance with accreditation by the laboratory within 5 days of completion or receipt of the

report. If accredited by A2LA, a laboratory must provide the Commission with a copy of each equivalent report within 5 days of completion or receipt of the report.

(2) A laboratory must provide the Commission with a copy of all substantive communications between the laboratory and the recognized accrediting body. The laboratory must submit the copy to the Commission no later than 10 days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that either voluntarily makes a decision to discontinue accreditation or is informed by its accrediting body of the accrediting body's decision to discontinue its accreditation in a specific forensic discipline or category of analysis must submit written notification to the Commission no later than 5 business days after the effective date of the discontinuation.

(4) A laboratory must notify the Commission by email no later than five (5) business days of any change to the employment status of its Commission-licensed forensic analyst or forensic technician who departs employment, experiences a gap in employment, is not actively performing casework, or temporarily assumes non-forensic analysis, administrative duties from the laboratory.

(e) Federal forensic laboratories. A federal forensic laboratory is deemed to be accredited by the Commission without application[;] provided that the laboratory is accredited by a recognized accrediting body as provided under §651.4 of this subchapter (relating to List of Recognized Accrediting Bodies). A laboratory deemed accredited is not subject to the reporting requirements of this subchapter or the processes provided under Subchapter B of this chapter (relating to Complaints, Special Review, and Administrative Action).

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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Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.202, §651.207

**Statutory Authority.** The rule amendments are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §3-a and its authority to license forensic analysts under §4-a(b).

**Cross reference to statute.** The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.202. Definitions.

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

(1) Accredited laboratory - Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Ar-

title 38.35, Code of Criminal Procedure, and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(2) Accredited university - A college or university accredited by a national accrediting body recognized by the United States Department of Education[.] or a foreign university with a degree program(s) recognized as equivalent by the Commission

(3) Crime scene investigation - Includes locating, documenting, and preserving evidence at a crime scene as well as analysis of selected evidence for purposes of assessing suitability for additional forensic testing. It does not include the application of the scientific method to evaluate information regarding a scene, which would be considered crime scene reconstruction.

(4) Crime scene processing - Includes locating, documenting, and preserving evidence at a crime scene, but does not include any analytical activities with respect to the evidence.

(5) Crime scene reconstruction - The application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements. Crime Scene Reconstruction--as distinguished from crime scene processing or crime scene investigation--includes the application of analytical methods beyond general observations or opinions about the scene to identify and test hypotheses.

(6) Document Examination - Includes the scientific examinations, analyses, and comparisons of documents in order to determine the origin, authenticity, and authorship.

(7) Forensic analysis - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(8) Forensic analyst - A person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(9) Forensic anthropology - Includes the application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains.

(10) Forensic pathology - Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(11) Inactive - A forensic analyst or forensic technician license issued by the Commission is designated inactive when a person licensed by the Commission:

(A) departs employment, experiences a gap in employment, is not actively performing casework, or temporarily assumes non-forensic analysis administrative duties for an accredited laboratory; or

(B) is within the period of ninety (90) days permitted to reinstate an expired license pursuant to §651.209(a) of this subchapter (relating to Forensic Analyst and Forensic Technician License Expiration).

(12) [(11)] Interpretation for toxicology - Interpretation is the consideration of dose-response relationships between drugs, alcohol, or other compounds of interest and the resulting behavioral or physical changes to human performance, including the evaluation of

pharmacokinetic and pharmacodynamics parameters. Examples include but are not limited to: calculation of dose or other pharmacokinetic calculations; determination of drug/drug interactions; determination (or reporting) of therapeutic, toxic, or lethal drug ranges; evaluation of drug absorption, distribution, metabolism, or excretion; and determination of the effects (mental or physical).

(13) [(12)] Latent print examination - Includes the forensic examination of friction ridge detail from the hands and feet.

(14) [(13)] Latent Print Processing -Includes identifying and preserving latent prints from items obtained at a crime scene utilizing appropriate visual, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate.

(15) [(14)] Physical evidence - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(16) [(15)] Professional Misconduct - The forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

(17) [(16)] Forensic Technician - An individual who performs basic analytical functions under the supervision of a qualified analyst, but does not evaluate data, reach conclusions, or sign any report for court or investigative purposes, shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network

*§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring, and Mandatory Legal and Professional Responsibility Training.*

(a) Issuance. The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) License Term. A Forensic Analyst or Forensic Technician license holder must renew the license holder's license after the initial date of issuance, every two years on the day before the issuance of the initial license with the exception of §651.208(b) of this subchapter (relating to Renewal Term).

(c) Application. Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analyst and \$130 for Technicians/Screeners;

(C) Pro-rated Fees for Certain License Renewals. This subsection applies to licensees initially licensed before January 1, 2024



who are renewing on or before December 31, 2026. Application fee of \$220 for Analysts and \$150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's renewed license term under §651.208(b) of this subchapter exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under §651.208(b) of this subchapter is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

(D) Temporary License fee of \$100;

(E) Provisional License fee of \$110 for Analysts and \$75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(F) License Reinstatement fee of \$220;

(G) *De Minimis* License fee of \$200 per ten (10) licenses;

(H) Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(I) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license. If a forensic analyst or forensic technician departs employment, experiences a gap in employment, is no longer actively performing casework, or temporarily assumes non-forensic analysis, administrative duties from an accredited laboratory, or has ninety (90) days or less to reinstate an expired license pursuant to §651.209(a) of this subchapter (relating to Forensic Analyst and Forensic Technician License Expiration), the licensee's status is deemed inactive and will be designated as inactive in the Commission's online database of licensees, until such time that the licensee notifies the Commission of their employment by an accredited laboratory as a forensic analyst or forensic technician, or has a change in job duties requiring the licensee to resume active casework; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(e) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive).

A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance, must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive).

A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science. (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

(A) The American Board of Forensic Toxicology;

(B) The American Board of Clinical Chemistry;

(C) The American Board of Criminalistics;

(D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration*) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent casework in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(j) Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom

testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

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 December 6, 2024.

TRD-202405895

Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: January 19, 2025

For further information, please call: (512) 936-0661



## SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

### 37 TAC §651.402

The Texas Forensic Science Commission (Commission) proposes the repeal of 37 Texas Administrative Code §651.402.

**Background and Justification.** This repeal makes a non-substantive edit to change the section's number to §651.401. The current numbering of the subchapter begins with §651.402 and should begin with §651.401. The Commission will repropose the rule with the correct number-651.401 in a separate rulemaking.

**Fiscal Impact on State and Local Government.** Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the repeal.

**Local Employment Impact Statement.** The repeal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

**Probable Economic Costs to Persons Required to Comply with Proposal.** The repeal 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.

**Public Benefit.** Ms. Tomlin has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit includes the correct numbering of the sections of the rules.

**Fiscal Impact on Small and Micro-businesses and Rural Communities.** There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of the repeal. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

**Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this repeal and that

this repeal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Environmental Rule Analysis.** Ms. Tomlin has determined that the proposed repeal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the repeal will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the repeal does not create or eliminate a government program; 2) implementation of the repeal does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the repeal does not increase or decrease future legislative appropriations to the agency; 4) the repeal does not require a fee; 5) the repeal does not create a new regulation; 6) the repeal does not increase the number of individual's subject to regulation; and 7) the repeal has a neutral effect on the state's economy.

**Request for Public Comment.** The Commission invites comments on the repeal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 24, 2025 to be considered by the Commission.

**Statutory Authority.** The repeal is made in accordance with the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01. This rulemaking is also proposed under Texas Government Code Section 2001.003(6)(B), which defines "rule" to include repeals.

*§651.402. Notice and Hearing Request.*

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 December 6, 2024.

TRD-202405897

Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: January 19, 2025

For further information, please call: (512) 936-0661



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

##### SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

##### DIVISION 1. CHRONIC WASTING DISEASE (CWD)

##### 31 TAC §65.82

The Texas Parks and Wildlife Department withdraws proposed amendments to §65.82 which appeared in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5334).

Filed with the Office of the Secretary of State on December 5, 2024.

TRD-202405892

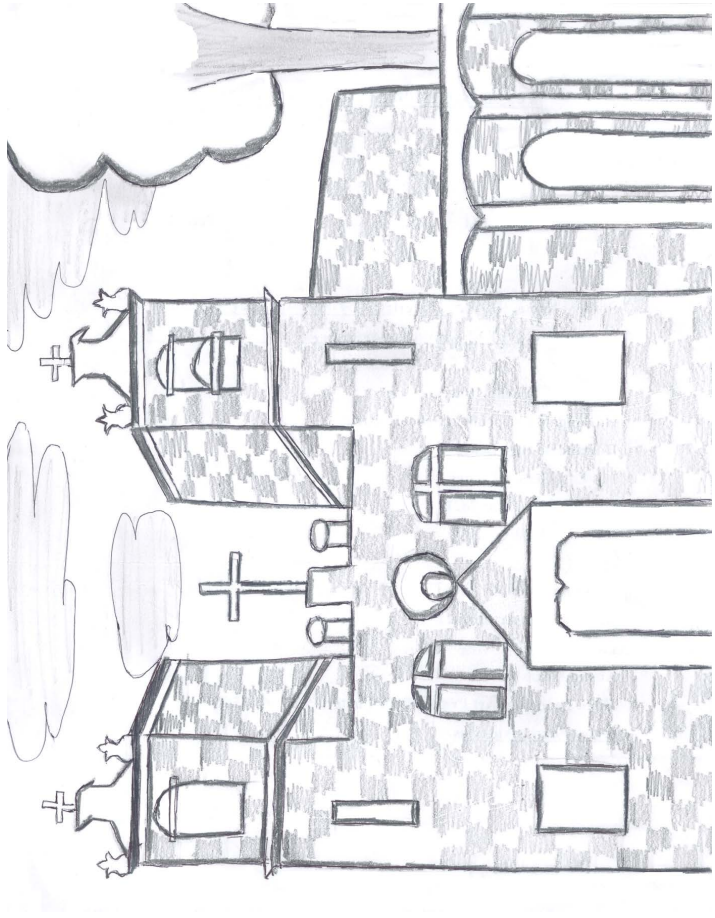
James Murphy  
General Counsel

Texas Parks and Wildlife Department

Effective date: December 5, 2024

For further information, please call: (512) 389-4775





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

##### SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS

##### DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

###### 1 TAC §371.1721

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Office of Inspector General (OIG), adopts in the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 371, Subchapter G, Division 3, new §371.1721, concerning Recoupment of Overpayments Identified by Inspection.

New §371.1721 is adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4119). This rule will not be republished.

###### BACKGROUND AND JUSTIFICATION

New §371.1721 describes OIG's inspection procedures related to records requests, inspection processes, notices, final reports, and due process.

Texas Government Code §531.102 authorizes OIG to conduct inspections related to the provision and delivery of all health and human services in Texas to identify fraud, waste, or abuse.

###### COMMENTS

The 31-day comment period ended July 15, 2024.

During this period, OIG received comments regarding the proposed rule from seven commenters: Texas Academy of Pediatric Dentistry, Texas Medical Association, Texas Hospital Association, Texas Organization of Rural and Community Hospitals, Teaching Hospitals of Texas, Children's Hospital Association of Texas, and Texas Association for Home Care & Hospice. A summary of comments relating to §371.1721 and OIG's responses follow.

Comment: One commenter expressed concern that there is no express statutory authority for OIG to recover overpayments identified by inspections. The commenter asserted that recovering overpayments through an inspection versus an investigation would circumvent the Legislative intent of Senate Bill (S.B.)

1803, 83rd Legislature, Regular Session, 2013 and S.B. 207, 84th Legislature, Regular Session, 2015. Additionally, the commenter stated that OIG lacks implied authority to recover overpayments identified by inspection because recovering overpayments is (1) not necessary to carry out the express responsibilities given to OIG by the Legislature and (2) inconsistent with Texas Government Code Chapter 531 Subchapter C's general statutory objective. Further, the commenter stated that the recovery of overpayments identified by inspections is not necessary for OIG to carry out its responsibilities relating to preventing, detecting, and taking enforcement against fraud, waste, and abuse in the state's health and human services programs because the Legislature has already established a statutory framework for OIG to recover overpayments, and that framework contemplates recoveries identified by investigation. The commenter further asserted that the provisions of Subchapter C balance the OIG's enforcement efforts with due process and other protections for providers, but these protections and due process are contemplated in the context of an investigation, which is the only method of overpayment recovery expressly discussed in Subchapter C. Additionally, the commenter stated that the proposed rule does not contain these protections and due process, and is not in harmony with the general objectives of Subchapter C, and, therefore, exceed OIG's rulemaking authority. The commenter recommends that the proposed rules be amended to remove the provisions addressing the recovery of overpayments identified by inspections.

Response: OIG declines to revise the rule in response to these comments. Texas Government Code §531.102(a) grants OIG responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state and the enforcement of state law relating to the provision of those services. The Legislature chooses statutory words and phrases deliberately and purposefully. Audits, inspections, reviews, and investigations are different types of examinations OIG is expressly authorized by the Legislature to perform. Each of these types of examinations include the opportunity to detect health and human services payments made to persons or providers to which they were not entitled. Recovery of overpayments prevents fraud, waste, and abuse by recovering misspent state and federal dollars so they may be spent appropriately to care for persons in need and by deterring persons inclined to commit fraud, waste, and abuse.

When the Legislature expressly grants power to an agency, it also implicitly intends that the agency have the authority reasonably necessary to accomplish its express responsibilities. The Legislature's express statutory authority related to one type of examination (investigation) does not limit implied powers that are reasonably necessary to carry out other express responsibilities given by the Legislature to OIG. When OIG detects an overpay-

ment during an inspection of a healthcare provider, the recovery of the overpayment fulfills the Legislature's mandate to prevent fraud, waste, and abuse.

HHSC's rulemaking authority is broad. Texas Government Code §531.033 requires the Executive Commissioner to adopt rules necessary to carry out the commission's duties under Chapter 531. Texas Government Code §531.0055(e) and Texas Human Resources Code §32.021 and §32.032 provide the HHSC Executive Commissioner with rulemaking authority for the operation of health and human services in Texas. Texas Human Resources Code §32.021 gives the HHSC Executive Commissioner authority to adopt necessary rules for the proper and efficient operation of the Medicaid program. Texas Human Resources Code §32.032 requires the HHSC Executive Commissioner to adopt reasonable rules for minimizing the opportunity for fraud and abuse and for establishing and maintaining methods for detecting and identifying situations in which a question of fraud or abuse in the program may exist.

Additionally, Texas Government Code §531.1131(c-2) states, in part, that if OIG discovers fraud, waste, or abuse in the performance of its duties, OIG may recover payments made as a result of the fraud, waste, or abuse as otherwise provided by Texas Government Code, Chapter 531, Subchapter C. Section 531.1131(e) requires the Executive Commissioner to adopt rules necessary to implement §531.1131. OIG's statutory duties under Texas Government Code §531.102(a) include conducting inspections and preventing and detecting fraud, waste, and abuse.

Senate Bill 1803 was passed in 2013 at a time when OIG did not conduct inspections. Similarly, S.B. 207, passed in 2015, focused largely on implementing the recommendations of the Sunset Advisory Commission review, which was conducted at a time when OIG did not perform inspections. Additionally, much of S.B. 1803 and S.B. 207 focused on protections related to an OIG payment hold, a different process than recovery of an overpayment.

Further, Title 42 United States Code (U.S.C.) §1396a(a)(30), in part, requires HHSC to have a State plan for Medicaid that provides methods and procedures relating to the utilization of, and payment for, care and services available under the plan as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care. Title 42 Code of Federal Regulations (C.F.R.) §456.3 requires the Medicaid state agency to implement a statewide surveillance and utilization control program that safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments. HHSC's Medicaid State Plan states, in part, that HHSC has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments.

New §371.1721 implements a method for detecting and identifying fraud, waste, and abuse, increases the efficiency of the Medicaid program by recovering payments to which a person or provider was not entitled, and minimizes the opportunity for fraud, waste, and abuse by deterring bad actors. The Statutory Authority section of this Adoption Preamble describes additional statutory authority and HHSC rulemaking authority for §371.1721.

Comment: Four commenters stated that new §371.1721 appears to extend beyond OIG's statutory authority. The commenters asserted that OIG's authority under Texas Govern-

ment Code §531.102(a) and Texas Administrative Code (TAC) §371.11 limit OIG inspections to the inspection of fraud, waste, and abuse and would not include overpayments caused by error, such as billing or payment errors, or misunderstanding. The commenters stated that §371.1721 should be revised to define inspections in a way that limits inspections to fraud, waste, and abuse and to not include any overpayment allegation arising outside of fraud, waste, or abuse. Additionally, the commenters asserted that §371.1721 is improper because an inspection is not bounded by OIG's limited statutory authority to police fraud, waste, and abuse.

Response: OIG declines to revise the rule in response to these comments. Texas Government Code §531.102(a) grants OIG responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state and the enforcement of state law relating to the provision of those services. The Legislature chooses statutory words and phrases deliberately and purposefully. Audits, inspections, reviews, and investigations are different types of examinations that OIG is expressly authorized by the Legislature to perform. Each of these types of examinations include the opportunity to detect health and human services payments made to persons or providers to which they were not entitled. Recovery of overpayments prevents fraud, waste, and abuse by recovering misspent state and federal dollars so they may be spent appropriately to care for persons in need and by deterring persons inclined to commit fraud, waste, and abuse.

When the Legislature expressly grants power to an agency, it also implicitly intends that the agency have the authority reasonably necessary to accomplish its express responsibilities. When OIG detects an overpayment during an inspection of a healthcare provider, the recovery of the overpayment fulfills the Legislature's mandate to prevent fraud, waste, and abuse.

HHSC's rulemaking authority is broad. Texas Government Code §531.033 requires the Executive Commissioner to adopt rules necessary to carry out the commission's duties under Chapter 531. Texas Government Code §531.0055(e) and Texas Human Resources Code §32.021 and §32.032 provide the HHSC Executive Commissioner with rulemaking authority for the operation of health and human services in Texas. Texas Human Resources Code §32.021 gives the HHSC Executive Commissioner authority to adopt necessary rules for the proper and efficient operation of the Medicaid program. Texas Human Resources Code §32.032 requires the HHSC Executive Commissioner to adopt reasonable rules for minimizing the opportunity for fraud and abuse and for establishing and maintaining methods for detecting and identifying situations in which a question of fraud or abuse in the program may exist.

Additionally, Texas Government Code §531.1131(c-2) states, in part, that if OIG discovers fraud, waste, or abuse in the performance of its duties, OIG may recover payments made as a result of the fraud, waste, or abuse as otherwise provided by Texas Government Code, Chapter 531, Subchapter C. Section 531.1131(e) requires the Executive Commissioner to adopt rules necessary to implement §531.1131. OIG's statutory duties under Texas Government Code §531.102(a) include conducting inspections and preventing and detecting fraud, waste, and abuse.

Further, 42 U.S.C. §1396a(a)(30), in part, requires HHSC to have a State plan for Medicaid that provides methods and procedures relating to the utilization of, and payment for, care and services available under the plan as may be necessary to safeguard



against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care. Title 42 C.F.R. §456.3 requires the Medicaid state agency to implement a statewide surveillance and utilization control program that safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments. HHSC's Medicaid State Plan states, in part, that HHSC has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments.

Title 42 C.F.R. §433.304, §438.2, and 1 TAC §371.1(55) define "overpayment" without any relationship to, or confinement within, the terms fraud, waste, and abuse. A search for fraud, waste, or abuse in Medicaid may lead to a payment made to a person to which the person was not entitled under Medicaid - an overpayment.

New §371.1721 implements a method for detecting and identifying fraud, waste, and abuse, increases the efficiency of the Medicaid program by recovering payments to which a person or provider was not entitled, and minimizes the opportunity for fraud, waste, and abuse by deterring bad actors. The Statutory Authority section of this Adoption Preamble describes additional statutory authority and HHSC rulemaking authority for §371.1721.

Comment: Four commenters asserted that OIG's statutory authority for inspections for fraud, waste, and abuse does not encompass alleged overpayment determinations arising from contractual agreements between managed care organizations (MCOs) and providers that use different payment models, methodologies or rates than Medicaid fee-for-service. The commenters stated that use of new §371.1721 to recover overpayments made by an MCO to a provider based on a negotiated contract methodology would be beyond OIG's statutory authority, be inconsistent with federal regulations, case law, and Texas Medicaid authorities, and, absent a showing of fraud, waste, or abuse, constitute a prohibited constitutional taking and a violation of the Contracts Clause under the United States and Texas constitutions. The commenters stated that OIG's statutory authority does not support an inspection process that deprives managed care providers of the protections included in the contracts negotiated between providers and MCOs that specifically address contractual reimbursement disputes. The commenters further asserted that the federal and state regulatory structure for MCO-delivered services demands more predicate for an inspection or audit than a payment being inconsistent with Texas fee-for-service Medicaid coverage or payment requirements. The commenters stated that §371.1721 binds providers and MCOs to fee for service rules, coverages, and payment amounts in clear opposition to the state's long-standing goals for and operational authority within managed care and fails to identify how OIG will fulfill its responsibilities for oversight of MCOs' waste, fraud, and abuse. The commenters expressed concern that §371.1721 would interfere with Medicaid participating hospitals and Medicaid MCOs' contracts. The commenters requested that new §371.1721 make clear that the inspection process will not be used to conduct inspections that involve disagreements over the appropriate reimbursement methodologies or contractual payment arrangements for services under a managed care agreement. The commenters further requested that new §371.1721 be narrowed to provide that OIG will only conduct inspections where there is a clear violation of billing rules applicable to managed care payments (e.g., submitting

duplicate claims, etc.) or other meaningful showing of fraud, waste, or abuse.

Response: OIG declines to revise the rule in response to these comments. Title 42 C.F.R. §438.2 defines "overpayment" as, in part, any payment made to a network provider by a MCO to which the network provider is not entitled under Title XIX of the [Social Security] Act. The Uniform Managed Care Contract (UMCC) uses the definition from C.F.R. §438.2 to define "overpayment." The definitions of "overpayment" in 42 C.F.R. §438.2, the UMCC, and 1 TAC §371.1(55) do not refer to the terms fraud, waste, or abuse. By these definitions, an overpayment includes an amount a person is paid to which the person was not entitled under Medicaid. The criteria by which entitlement of funds is measured in Medicaid may arise from multiple sources, including federal or state statute, federal or state rule, or contract. A network provider contract with a MCO may not circumvent law or HHSC contract to authorize a payment to a network provider to which the network provider is not entitled under Medicaid. OIG inspections will use valid fee-for-service and managed care criteria, as applicable, to evaluate payments to persons subject to an inspection, including managed care network providers.

OIG is unable to answer the part of the comment that refers to federal regulations, case law, Texas Medicaid authorities, and, potentially, a violation of the Contracts Clause under the United States and Texas constitutions, because that part of the comment is too vague and too broad.

Comment: Four commenters asked how the changes in §371.1721 would apply to inspections in progress as of the effective date of the rule. The commenters asserted that the Administrative Procedures Act in Texas Government Code chapter 2001 requires that this information be specified in the proposal rule and when the final rule is adopted.

Response: Publication of final rule §371.1721 in the *Texas Register* will include the effective date. The provisions in §371.1721 will be effective for all inspections begun on or after the effective date. OIG disagrees that the Administrative Procedures Act in Texas Government Code chapter 2001 requires that the proposal rule include information about how the rule would apply to inspections in progress as of the effective date of the rule.

Comment: Four commenters stated that §371.1721 does not define "inspection," does not provide specifics or boundaries on what an inspection may entail, and, therefore, inspection targets are deprived of adequate notice of what should be expected under §371.1721. The commenters requested that OIG revise §371.1721 to include a definition of inspection consistent with its statutory authority to pursue only matters involving fraud, waste, and abuse.

Response: OIG declines to revise the rule in response to this comment. Section 371.1721 does provide specifics, boundaries, and a description of what an inspection encompasses. In part, §371.1721 includes a summary of the statutory scope of an inspection (subsection (a)); the standards OIG inspections follow, which include standards for independence, competence, planning, evidence collection and analysis, reporting, follow-up, and quality control (subsection (c)(1)); procedures, time deadlines, and potential penalties related to records requests; the scope of time an inspection may examine (subsection (c)(2)); the types of notices provided to persons subject to an inspection (subsection (c)(3) and (d)); the elements included in an inspection final report (subsection (e)); the opportunity to produce documentation to address any finding found during an inspection (subsec-

tion (c)(4)); the due process available to a person subject to an inspection, including the time deadlines and requirements for requesting an administrative hearing appeal (subsection (f)); and the scope, effect, and timelines related to a final inspection report (subsection (g)). The specifics, boundaries, and description contained in the rule effectively define an OIG inspection and provide adequate notice of what persons should expect from the rule.

Comment: One commenter asked whether OIG inspections are conducted on-site, off-site, or both.

Response: Section 371.1721 allows on-site and off-site inspections.

Comment: One commenter asked whether a records request is based on sampling.

Response: Ordinarily, OIG requests a full population of records for the scope period and then selects a sample from that population.

Comment: One commenter asked whether the number of records requested is supposed to be reasonable and how that term is defined. The commenter stated that there is no method in the rule for the provider to extend the period for submission of records if the number of records requested is unreasonable or overburdensome.

Response: The rule requires a provider to provide records within the time period requested by OIG or ten calendar days from the date of receipt of the request, whichever is later. An OIG record request may provide for a due date beyond ten days, but not less than ten days. The volume of records requested for an inspection should be reasonable. Additionally, OIG is receptive to requests for extension when an extension is warranted.

Comment: One commenter stated that the rule could allow OIG to request records to be submitted along with the required affidavit within one day to maintain the element of surprise. The commenter requested that element of surprise be defined to ensure there is a clear understanding of what this means in the context of the rule.

Response: OIG declines to revise the rule in response to this comment. An example of an element of surprise would be the circumstance in which there was compelling evidence that a provider was in the process of destroying records that had been requested for an OIG inspection. In that example, OIG could request that the records be provided immediately.

Comment: One commenter stated that since the inspection period allows the OIG to go back five years, some records could be off-site. The commenter asserts that §371.1721(b)(1) is too broad and without provider protections; and there is the opportunity for provider noncompliance related to factors outside the provider's control.

Response: OIG declines to revise the rule in response to this comment. OIG is receptive to requests for extension when an extension is warranted.

Comment: Four commenters stated that, under §371.1721(b)(1), while the proposed rule recognizes the discretion of the OIG to establish a longer document response deadline, a ten-day default period to produce records or risk enforcement action is unreasonable and draconian - and particularly punitive for rural and community hospitals with limited resources and workforce. The commenters recommended the default period should be extended to 30

days, at a minimum, or should be tiered based on the size and date range of the record request and the rule should create a process to request an extension based on extenuating circumstances. Additionally, the commenters recommended that OIG revise the rule to give a provider written notice and an opportunity to cure any deficiencies before enforcement action is taken under §371.1721(b)(3).

Response: OIG declines to revise the rule in response to these comments. As noted by the commenters, the rule requires a provider to submit records within the time period requested by OIG or ten calendar days from the date of receipt of the request, whichever is later. An OIG record request may provide for a due date beyond ten days, but not less than ten days. Additionally, OIG is receptive to requests for extension when an extension is warranted.

Comment: One commenter stated that producing five years of records in 10 calendar days is difficult and overburdensome for a pediatric dentist who practices in multiple locations, including the hospital setting. The commenter proposed revising the deadline to 30 calendar days.

Response: OIG declines to revise the rule in response to this comment. The rule requires a provider to submit records within the time period requested by OIG or ten calendar days from the date of receipt of the request, whichever is later. An OIG record request may provide for a due date beyond ten days, but not less than ten days. Additionally, OIG is receptive to requests for extension when an extension is warranted.

Comment: A commenter expressed concern that the rule requirements for a business records affidavit could place persons in a compliance catch-22 situation if the requested document did not qualify as a business record under the Texas Rules of Evidence. The commenter was also concerned about requiring a person to sign and notarize a document that was prepared by OIG and not the person's legal counsel. Additionally, the commenter recommended that the requirements in §371.1721(b) relating to the records affidavit be removed.

Response: OIG declines to revise the rule in response to this comment. If the "catch-22" scenario described in the comment occurred, OIG would consider the person's objection that the requested record in the person's possession was not, in fact, a business record under the Texas Rules of Evidence. The OIG-approved business records affidavit was prepared by OIG and based on the "Form of Affidavit" provided in the Texas Rules of Evidence. If the person who received the OIG records request preferred to have the person's attorney prepare the affidavit, OIG would assess whether the affidavit met the requirements specified in the Texas Rules of Evidence.

Comment: Four commenters stated that the affidavit requirement in §371.1721(b)(2) is too strict, burdensome, and unreasonable and may lead to unfair rejections of medical record submissions. Additionally, the commenters asserted that an administratively deficient affidavit, without an opportunity to cure, should not lead to an enforcement action under §371.1721(b)(3).

Response: OIG declines to revise the rule in response to these comments. When a records affidavit is requested by OIG for an inspection, OIG would provide the OIG-approved records affidavit referred to in §371.1721(b)(2) to the subject of the inspection along with the records request. The affidavit was prepared by OIG and based on the "Form of Affidavit" provided in the Texas Rules of Evidence Rule. If the person who received the OIG records request preferred to have the person's attorney pre-

pare the affidavit, OIG would assess whether the affidavit met the requirements specified in the Texas Rules of Evidence.

Comment: A commenter expressed concern about electronic notices being sent without a recipient's awareness. This commenter recommended that the rule be amended so that email notices must be consented to by the recipient and that the rule be revised to include, by reference, OIG's other methods of service in §371.1609. Additionally, four commenters stated that §371.1721(d)(3) is unduly burdensome to providers or otherwise unreasonable because it does not specify how an appropriate email notice will be determined or whether OIG will commit to receiving information, including appeal requests by electronic mail.

Response: OIG declines to revise the rule in response to this comment. Electronic mail, including secure or encrypted email for confidential or HIPAA information, is an appropriate and reliable alternative method to send notices. Before sending the inspection announcement email, OIG will contact the person who is the subject of the inspection by telephone to obtain the best email address or addresses for sending email notices. Subsequent notices will be sent by email to the email address provided by the subject of the inspection.

Comment: Four commenters stated that the five-year limit in subsection §371.1721(c)(2) is unclear because it does not adequately define the starting or ending point of the five-year period. The commenters asserted that OIG does not have authority to apply a longer period to recover alleged overpayments than any limitations period set forth in a contract with an MCO or with Texas law applicable to contracts (which, at its longest, creates a four-year statute of limitations). The commenters recommended that §371.1721 should (1) clarify that any inspection of payments made by MCOs to providers under network participation agreements is subject to the applicable contractual lookback periods unless there is evidence of fraud, waste, or abuse; (2) establish the parameters around the limitations period along with an example of how the limitations period is applied; and (3) incorporate an appropriate backstop time period, such as the one set forth in the Texas Medicaid Fraud Prevention Act--which generally does not allow recoveries beyond six years from the date of the act.

Response: OIG declines to revise the rule in response to this comment. Section 371.1721(c)(2) refers to the time scope of the records and conduct an OIG inspection may examine. For example, an OIG inspection may examine records and conduct covering state fiscal years (SFYs) 2020 through 2024, but not SFYs 2019 through 2024. The latter covers a six year period. OIG is unable to answer the comments related to "any limitations period set forth in a contract with an MCO or with Texas law applicable to contracts" and "under network participation agreements" because these comments are hypothetical and too vague.

Comment: One commenter stated that a person should be allowed a defined amount of time in §371.1721(c)(4), such as 10 days, to produce documentation to address a finding found during an inspection.

Response: OIG declines to revise the rule in response to this comment. The date specified by OIG permitting a person to produce documentation to address any finding will vary depending on factors such as the complexity, scope, and issues involved in the inspection.

Comment: One commenter requested that any notice from OIG be sent by certified mail. The commenter stated that time periods are short to provide records, pediatric dentists receive numerous emails a day, lower-level staff are often in charge of the email

box and pediatric dentists do not want to miss an email from OIG when OIG has the ability to penalize the dentist for being nonresponsive.

Response: OIG declines to revise the rule in response to this comment. Electronic mail, including secure or encrypted email for confidential or HIPAA information, is an appropriate and reliable alternative method to send notices. Before sending the inspection announcement email, OIG will contact the person who is the subject of the inspection by telephone to obtain the best email address or addresses for sending email notices. Subsequent notices will be sent by email to the email address provided by the subject of the inspection.

Comment: One commenter stated that audits of pediatric dentists often show under-billing and underpayments. The commenter stated that, although dentists will not be reimbursed for underpayments, it is helpful to know that they have missed filing claims so they can correct these clerical errors in the future. The commenter requested that the inspection final report include a finding of underpayments, if any were found.

Response: OIG declines to revise the rule in response to this comment. When an OIG inspection identifies overpayments and underpayments, those amounts will be offset and result in one finding of underpayment or overpayment. OIG will provide the detail of claims findings as part of the inspection process. When an OIG inspection identifies only underpayments, there will be a finding of an underpayment.

Comment: Four commenters observed that §371.1723 does not include any timeframes or deadlines for OIG to diligently complete the inspection process. The commenters state that inspection targets should not be held to stringent deadlines while OIG is not required to meet any timeframe requirements in various stages of the inspection process.

Response: OIG declines to revise the rule in response to these comments. The length of the inspection process varies depending on the responsiveness of the subject of the inspection, the completeness and clarity of the documentation provided, and the time involved for meetings between the parties when criteria clarification is needed.

Comment: One commenter requested that draft inspection reports be completed no later than one year from the time OIG receives all requested information and that the rule be revised to add a time limit on when an inspection final report can be issued by OIG. The commenter asserted that pediatric dentists report that it has taken OIG up to two years to respond to a dental audit.

Response: OIG declines to revise the rule in response to this comment. The length of time it takes for OIG to complete draft and final inspection reports varies depending on factors, such as the complexity, scope, and issues involved in the inspection. OIG is not aware of any dental audits that have remained ongoing for up to two years since, at least May of 2017, when OIG began publishing its final audit reports on its website.

Comment: Four commenters stated that it is unfair and unduly burdensome that §371.1721(f)(1) does not include a minimum time period for the target of an inspection to provide a written response to the draft inspection report. Another commenter stated that there should be a standard time set for receipt of the management response, such as within 10 days or the date specified by the OIG, whichever is longer.

Response: OIG declines to revise the rule in response to these comments. Providing a management response is voluntary under §371.1721(f)(1). The subject of a completed inspection who agrees with the inspection findings may not wish to submit a management response. The date specified by OIG to submit a management response will vary depending on factors such as the complexity, scope, and issues in the draft inspection report and how long the subject of the inspection has known about the issues.

Comment: Four commenters requested that the language in §371.1721(f)(2)(C) be clarified to state that the hearing process is not within the HHSC Appeals Division, but instead is through the State Office of Administrative Hearings (SOAH).

Response: OIG declines to revise the rule in response to this comment. The phrase "administrative hearing at the HHSC Appeals Division" in §371.1721(f)(2)(C) refers to an administrative hearing appeal at (i.e., "within") the HHSC Appeals Division. Section 371.1721 does not require a SOAH hearing. OIG believes an administrative hearing at the HHSC Appeals Division is the appropriate setting for the appeal of inspection findings. Texas Government Code, Chapter 2001, Subchapter G, provides for judicial review of agency decisions in a contested case.

Comment: One commenter asked why there is a separate process for collection of an overpayment as a result of an inspection rather than referring to §371.1711 for the collection process.

Response: OIG declines to revise the rule in response to this comment. The only process related to the collection of an overpayment in §371.1711 relates to subsection (c), notice requirements. The notice requirements specified in TAC Chapter 371 vary according to the different types of OIG examinations, such as investigations, audits, retrospective payment reviews, and utilization reviews. The notice requirements specific to OIG inspections are contained in §371.1721(d).

Comment: One commenter stated that the request for a payment plan agreement should be the same as in §371.1711.

Response: Section 371.1711 does not refer to payment plans. No revision to the rule is made in response to this comment.

Comment: One commenter stated that all other rules related to paying an overpayment and appeals should follow the process already outlined in §371.1711.

Response: This comment is beyond the scope of this rule because it relates to other rules.

Comment: One commenter asked what the delivery method and time frame is for receipt of the draft inspection report following completion of the field work and the final inspection report following the initial draft inspection report.

Response: Before sending the inspection announcement email, OIG will contact the person who is the subject of the inspection by telephone to obtain the best email address or addresses for sending email notices. The draft and final inspection reports will be sent by email to the email address provided by the person subject to inspection. The time frame between fieldwork and delivery of the draft inspection report and between the draft and final inspection reports may vary depending on factors, such as the complexity, scope, and issues involved in the inspection.

Comment: One commenter stated that all due process protections and procedures should be the same.

Response: OIG declines to revise the rule in response to this comment. The due process protections and procedures specified in TAC Chapter 371 vary according to the different types of OIG examinations, such as investigations, audits, retrospective payment reviews, and utilization reviews. OIG believes the due process protections and procedures in §371.1721 are appropriate for OIG inspections.

Comment: Four commenters stated that the 15-day period to request an appeal under §371.1721(f)(4) is not only unreasonable, but potentially impossible, if there are hundreds of claims at issue. The commenters requested that the rule provide 30 days for a provider to request an appeal and permit a provider to request an extension based on extenuating circumstances.

Response: OIG declines to revise the rule in response to these comments. Title 1, Texas Administrative Code §357.484, specifies the requirements for requesting a hearing with the HHSC Appeals Division. Section 357.484(b) states, in part, that (1) the request for hearing must be received within 15 days from the date the person receives notice of adverse action and (2) if the request is not filed in accordance with §357.484, the judge may deny the request. If §371.1721 allowed more than 15 days to request appeal, this could lead to confusion or, potentially, a denial of the appeal request despite complying with the time deadline in §371.1721. Additionally, OIG and the person subject to inspection discuss the inspection findings before the end of fieldwork, which occurs before dissemination of the draft and final inspection reports.

Comment: One commenter asked whether §371.1721(f)(4)(C) means that the person or provider who does not challenge inspection findings must still file an administrative hearing appeal to include that they will either pay the overpayment or seek a payment plan agreement.

Response: Section 371.1721(f)(4)(C) applies only when the person is challenging some, but not all, of the OIG inspection findings. In that circumstance, the person's written request to OIG for appeal must specify - for those findings that are not being challenged - whether the person will pay the overpayment within 60 days or seek a payment plan agreement.

#### STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants the OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides the OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the Office of Inspector General, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government

Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and adopt rules necessary for the proper and efficient operation of the Medicaid program; Texas Government Code §531.021(a), which provides HHSC with the authority to administer Medicaid funds; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement §531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by §531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2024.

TRD-202405893

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: December 26, 2024

Proposal publication date: June 14, 2024

For further information, please call: (512) 221-7320



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 2. LICENSING

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 4 TAC §2.1

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Chapter 2 (Licensing), Subchapter A (General Provisions), §2.1 (Application for a License), published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 3981) without changes. The Department identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039. The amendments to §2.1 are adopted without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 3981) and will not be republished.

The adopted amendments change language to allow the Department to determine what constitutes an incomplete application, change references to Chapter 2 from "these rules" to "this chapter," remove unnecessary language, make grammatical corrections, make editorial changes to language to improve the rule's readability, and update the form of a legal citation to the Texas Government Code, §2005.004.

The Department did not receive any public comments concerning the proposed amendments.

The amendments are adopted under Section 12.016 of the Texas Agriculture Code, which allows the Department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 12 of the Texas Agriculture Code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2024.

TRD-202405903

Susan Maldonado

General Counsel

Texas Department of Agriculture

Effective date: December 29, 2024

Proposal publication date: June 7, 2024

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



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 260. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §260.5, concerning Definitions; §260.7, concerning Descriptions of DBMD Program and CFC; §260.59, concerning Requirements for Home and Community-Based Settings; §260.203, concerning Qualifications of Program Provider Staff; §260.205, concerning Training; §260.341, concerning Employment Services; and §260.357, concerning Non-Billable Time and Activities.

The amendments to §260.5, §260.203 and §260.341 are adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5686). These rules will be republished.

The amendments to §260.7, §260.59, §260.205, and §260.357 are adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5686). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The adopted amendments are necessary to implement Texas Human Resources Code §32.0755, added by House Bill (H.B.) 4169, 88th Legislature, Regular Session, 2023. The adopted amendments implement a service similar to prevocational services, named employment readiness, in the Deaf Blind with Multiple Disabilities (DBMD) Program, one of HHSC's §1915(c) Medicaid waiver programs.

## COMMENTS

The 31-day comment period ended September 3, 2024.

During this period, HHSC received comments regarding the proposed rules from five commenters, including Disability Rights Texas; Texas Association of People Supporting Employment First; Texas Council for Developmental Disabilities; The Arc of Texas; and Advo Companies.

A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter expressed concern that the term "job-task oriented" in proposed §260.5(76) is subjective and unmeasurable and will lead to an increase in job task-oriented activities.

Response: HHSC declines to make a change in response to this comment because the term is only used in the description of employment readiness in proposed §260.341(f)(3) to establish that the service is not job-task oriented.

Comment: Several commenters recommended HHSC revise proposed §260.5(76) to change the definition of "Job-task oriented" from "focused on developing a skill related to a specific type of employment" to "focused on developing a single skill related to a specific type of employment" because its current definition is vague.

Response: HHSC declines to add "single" to the definition of "job-task oriented" in proposed §260.5(76). Adding "single" implies that focusing on developing multiple skills related to a specific type of employment is not job-task oriented, which is incorrect.

Comment: One commenter expressed concerns that the requirements in proposed §260.59(e), to ensure that an employment readiness location allows an individual to control the individual's own schedule and activities, have access to the individual's food at any time, receive visitors of the individual's choosing at any time and be physically accessible and free of hazards, are more appropriate for residential settings and irrelevant to employment readiness settings.

Response: HHSC did not make changes in response to this comment because the requirements in proposed §260.59(e) were added to comply with federal home and community-based services (HCBS) settings requirements for services provided in a group setting.

Comment: Several commenters questioned what the parameters are for the program provider's assurance in proposed §260.59(f)(2)(H). The commenters requested HHSC require program providers to provide assurance that the modifications are safe and based on evidence and best practice.

Response: HHSC declines to make changes in response to these comments. Proposed §260.59(f) already requires documentation of a specific and individualized assessed need that justifies the modification and the individual's or legally authorized representative's signature evidencing informed consent to the modification. The documentation around assessing need and justifying the modification encompasses an assurance that the modifications are safe and based on evidence of need and best practices.

Comment: One commenter expressed concern that the service provider qualification requirements in proposed §260.203(i) do not include specific employment or vocational training.

Response: HHSC declines to make changes in response to this comment because HHSC believes the qualifications in proposed §260.203(i)(3)(B) are sufficient to ensure that a service provider of employment readiness has the experience and competence to perform the job tasks needed to provide employment readiness. Employment readiness is habilitative in nature and not job-task oriented.

Comment: Several commenters expressed concerns with proposed rule §260.203(i)(2) related to qualifications of program provider staff which states parents and spouses are excluded from providing employment readiness to their minor children.

Response: The rule as proposed conforms with the Texas DBMD waiver application approved by CMS. Thus, HHSC declines to make changes in response to the comments above.

Comment: Several commenters recommended HHSC revise proposed §260.203 that requires three personal references unrelated by blood to the qualifications of program provider staff attesting to the provider's ability to maintain a safe environment and support goal-oriented skills development.

Response: HHSC declines to make changes in response to these comments. The rules as proposed currently require three personal references. Additionally, the training requirements currently in §260.205 require training on the individual's specific needs and goals. These training requirements are expected to help ensure staff are providing a safe environment and goal-oriented skills development.

Comment: Several commenters recommended HHSC revise proposed §260.341 to add a five-year lifetime limit to employment readiness that may only be extended after an individual attempts competitive integrated employment. The commenters emphasized the goal should be competitive integrated employment.

Response: HHSC declines to make a change in response to these comments because a lifetime limit is not person-centered and may limit the opportunities for competitive integrated employment for individuals who need more support beyond the proposed five years to prepare for employment. In addition, the annual review of service plans ensure services on an individual's plan are the most appropriate to meet the individual's current needs.

Comment: Several commenters expressed concern that the requirement in proposed §260.341(g), which requires employment readiness to be provided to an individual only if the individual's service planning team does not expect the individual to be competitively employed within one year after the date employment readiness begins, is unnecessarily complex. The commenters recommend that HHSC instead allow the provision of employment readiness if the service planning team determines that more than one year of employment readiness is necessary for the individual to gain competitive employment.

Response: HHSC declines to make a change in response to this comment. The requirement in proposed §260.341(g) to provide employment readiness to an individual only if the individual's service planning team does not expect the individual to be competitively employed within one year after the date employment readiness begins is consistent with the description of prevocational services in 42 CFR §440.180(c)(2)(i)(A).

Comment: Several commenters expressed concern that the requirement in proposed §260.341(h)(2) precludes an individual who is engaged in competitive employment from receiving em-

ployment readiness. The commenters suggested employment readiness may serve as a means for professional development for an individual who wants to improve their employment skills.

Response: HHSC declines to make changes in response to this comment. Employment assistance, a DBMD Program service defined in §260.5(44), can be used to gain additional employment skills. Furthermore, proposed §260.341(f)(1) describes employment readiness as assistance that prepares an individual to participate in employment.

Comment: One commenter stated vocational services do not cover group activities. The commenter also stated that vocational rehabilitation counselors may consider employment readiness as a day program service that diminishes skills necessary for competitive, integrated employment.

Response: HHSC did not make changes in response to this comment because vocational rehabilitation services are outside the scope of this project.

Comment: One commenter opposed the implementation of employment readiness, stating it is not a needed service and it is similar to day habilitation. The commenter expressed that employment assistance and supported employment are existing services that prepare an individual for paid employment in the community.

Response: HHSC declines to make changes in response to this comment because the implementation of employment readiness is necessary for compliance with Texas Human Resources Code §32.0755, added by House Bill 4169, 88th Legislature, Regular Session, 2023.

Comment: One commenter recommended HHSC invest in the development of individualized skills and socialization, employment assistance, and supported employment services to ensure every person has access to integrated, community-based activities and employment. The review of these services should cover the service rates, flexibility in the delivery of services, training, and transition support from Texas Workforce Commission - Vocational Rehabilitation Program services, transportation, long-term counseling for employment success, ongoing service provider training and development of expertise in employment issues at the state level.

Response: HHSC declines to make changes in response to these comments because it is outside the scope of this rule project.

Comment: One commenter requested that HHSC allow "enclave settings," i.e., settings that allow the exclusive employment of individuals with intellectual and developmental disabilities to complete contract work as part of their employment readiness service.

Response: HHSC declines to make changes in response to this comment because "enclave setting" is outside the scope of this project. Based on the interpretation of technical guidance from the Centers for Medicare & Medicaid Services, HHSC considers enclave settings, also known as small group employment, to be a distinct service from employment readiness, because of the differences in focus, structure, and goals.

HHSC made changes to the rules that are not in response to comments.

HHSC updated references in §260.5(21), (34), (50), (51), and (139) to rules administratively transferred from Title 40 Texas Administrative Code to Title 26 Texas Administrative Code.

HHSC updated references to the Texas Government Code citations in proposed §260.5(72) and (84) and §260.203(c) to implement H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

HHSC also made minor editorial changes in §260.5(76) and §260.341(f)(3) for consistency in the waiver program rules in the spelling of "job-task oriented."

HHSC replaced Individual Plan of Care, "IPC" reference with Individual Program Plan reference of "IPP" in proposed §260.341(f)(2)(C) because an individual's service outcomes are documented in the IPP, not the IPC.

HHSC revised proposed §260.341(i)(2) to require documentation in an individual's record that employment readiness is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973. This requirement aligns with current requirements to ensure services are not available through additional funding sources prior to accessing services in the waiver.

## SUBCHAPTER A. DEFINITIONS, DESCRIPTION OF SERVICES, AND EXCLUDED SERVICES

### 26 TAC §260.5, §260.7

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

#### §260.5. *Definitions.*

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

(1) Abuse--

- (A) physical abuse;
- (B) sexual abuse; or
- (C) verbal or emotional abuse.

(2) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

- (A) interactions with the individual;
- (B) availability to the individual for assistance or support when needed; and
- (C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adaptive aid--A service in the Deaf Blind with Multiple Disabilities (DBMD) Program that:

(A) enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives; and

(B) meets one of the following criteria:

(i) is an item included in the list of adaptive aids in the Deaf Blind with Multiple Disabilities Program Manual; or

(ii) is the repair or maintenance of an item on the list of adaptive aids in the Deaf Blind with Multiple Disabilities Program Manual that is not covered by a warranty.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by an adaptive behavior screening assessment.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. There are four adaptive behavior levels ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using the current version of one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior; or

(D) Vineland Adaptive Behavior Scales.

(7) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(8) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(9) Alarm call--A signal transmitted from an individual's Community First Choice (CFC) Emergency Response Services (ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(10) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code Chapter 247.

(11) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

(12) Audiology--A DBMD Program service that provides assessment and treatment by a licensed audiologist and includes training and consultation with an individual's family members or other support providers.

(13) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(14) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific outcomes and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(15) Behavioral emergency--A situation in which an individual is acting in an aggressive, destructive, violent, or self-injurious manner that poses a risk of death or serious bodily harm to the individual or others.

(16) Behavioral support--A DBMD Program service that provides specialized interventions to assist an individual in increasing adaptive behaviors and replacing or modifying behaviors that prevent or interfere with the individual's inclusion in the community and consists of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training and consulting with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluating the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluating the plan's effectiveness; and

(F) counseling and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(17) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(18) Calendar day--Any day, including weekends and holidays.

(19) Case management--The DBMD Program service described in §260.337 of this chapter (relating to Case Management).

(20) Case manager--A service provider of case management.

(21) CDS option--Consumer directed services option. A service delivery option defined in §264.103 of this title (relating to Definitions).

(22) CFC--Community First Choice.

(23) CFC ERS--CFC emergency response services. A CFC service that provides backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(24) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(25) CFC FMS--CFC financial management services. A CFC service provided to an individual who receives only CFC PAS/HAB through the CDS option.

(26) CFC PAS/HAB--CFC personal assistance services/habilitation. A CFC service:

(A) that consists of:

(i) personal assistance services, which provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:



(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation, which provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, including:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(27) CFC support consultation--A CFC service that provides support consultation to an individual who receives only CFC PAS/HAB through the CDS option.

(28) CFC support management--A CFC service that provides training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB.

(29) CFR--Code of Federal Regulations.

(30) Chemical restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(31) Chore services--A DBMD Program service, other than CFC PAS/HAB household chores, needed to maintain a clean, sanitary, and safe environment in an individual's home and consists of heavy household chores, such as washing floors, windows, and walls, securing loose rugs and tiles, and moving heavy items or furniture.

(32) CMS--The Centers for Medicare & Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(33) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(34) Contract--A provisional contract that the Texas Health and Human Services Commission enters into in accordance with §52.39 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 §52.39(e) of this title or a standard contract that HHSC enters into in accordance with §52.41 of this title (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §52.41(d) of this title.

(35) Controlling person--A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(36) Day Activity and Health Services Program--This term has the meaning set forth in Texas Human Resource Code §103.003.

(37) DBMD Program--The Deaf Blind with Multiple Disabilities Program.

(38) Deafblindness--A chronic condition in which a person:

(A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

(B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(39) Denial--An action taken by HHSC that:

(A) rejects an individual's request for enrollment into the DBMD Program;

(B) disallows a DBMD Program service or a CFC service requested on an individual plan of care (IPC) that was authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a DBMD Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(40) Dental treatment--A DBMD Program service that:

(A) consists of the following:

(i) emergency dental treatments, which are procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatments, which are examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatments, which include fillings, scaling, extractions, crowns, and pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis

is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatments, which are procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labiolingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(41) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(42) DFPS--Department of Family and Protective Services.

(43) Dietary services--A DBMD Program service that provides nutrition services, as defined in Texas Occupations Code §701.002.

(44) Employment assistance--A DBMD Program service that provides assistance to an individual to help the individual locate competitive employment in the community to the same degree of access as individuals not receiving DBMD Program services.

(45) Employment readiness--The DBMD Program service described in §260.341 of this chapter (relating to Employment Services).

(46) Employment readiness location--A location where employment readiness is provided.

(47) Enrollment Individual Plan of Care (IPC)--The first IPC for an individual developed before the individual's enrollment into the DBMD Program.

(48) Enrollment Individual Program Plan (IPP)--The first IPP for an individual developed before the individual's enrollment into

the DBMD Program in accordance with §260.65 of this chapter (relating to Development of an Enrollment IPP).

(49) 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 DBMD Program service that is defined in §264.103 of this title and provided to an individual participating in the CDS option.

(51) FMSA--Financial management services agency. An entity, as defined in §264.103 of this title, 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) Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(55) Good cause--As determined by HHSC, A reason outside the control of a CFC ERS provider that is an acceptable reason for the CFC ERS provider's failure to comply.

(56) HCSSA--Home and community support services agency. An entity required to be licensed under Texas Health and Safety Code (THSC) Chapter 142.

(57) Health-related tasks--Specific tasks related to the needs of an individual that can be delegated or assigned by a licensed healthcare professional under state law to be performed by a service provider of CFC PAS/HAB. These include:

(A) tasks delegated by a registered nurse (RN);

(B) health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and

(C) activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(58) HHSC--The Texas Health and Human Services Commission.

(59) Hospital--A public or private institution that is licensed or is exempt from licensure in accordance with THSC Chapters 13, 241, 261, or 552.

(60) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores;

communicating by phone or other media; and traveling around and participating in the community.

(61) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is A facility in which ICF/IID Program services are provided and that is:

- (A) licensed in accordance with THSC Chapter 252; or
- (B) certified by HHSC, including a state supported living center.

(62) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(63) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form used to determine the LOC for an individual.

(64) Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(65) Individual--A person seeking to enroll or who is enrolled in the DBMD 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. The form is used to document how transportation as a residential habilitation activity will be delivered to support an individual's desired goals and outcomes for transportation as identified in the IPP.

(67) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464.

(68) In person or in-person--Within the physical presence of another person. In person or in-person does not include using videoconferencing or a telephone.

(69) 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) Intervener--A service provider with specialized training and skills in deafblindness who, working with one individual at a time, serves as a facilitator to involve an individual in home and community services and activities, and who is classified as an Intervener, Intervener I, Intervener II, or Intervener III in accordance with Texas Government Code §526.0404.

(73) IPC--Individual plan of care. A written plan developed by an individual's service planning team and documented on the HHSC Individual Plan of Care form. An IPC:

(A) documents:

(i) the type and amount of each DBMD Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year; and

(ii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(74) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of the enrollment IPC, as described in §260.67(a)(1)(F) of this chapter (relating to Development of a Proposed Enrollment IPC), through the last calendar day of the 11th month after the month in which enrollment occurred; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §260.77(a)(1) of this chapter (relating to Renewal and Revision of an IPP and IPC).

(75) IPP--Individual program plan. A written plan that includes the information described in §260.65(b) of this chapter (relating to Development of an Enrollment IPP) and documented on an HHSC Individual Program Plan form.

(76) Job-task oriented--Focused on developing a skill related to a specific type of employment.

(77) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(78) Licensed assisted living--A DBMD Program service provided by a program provider in an ALF that is owned by the program provider.

(79) Licensed home health assisted living--A DBMD Program service provided by a program provider licensed as a HCSSA, in a residence for no more than three individuals. The residence must be owned or leased by at least one of the residents and must not be owned or leased by a program provider.

(80) Licensed vocational nursing--A DBMD Program service that provides vocational nursing, as defined in Texas Occupations Code §301.002.

(81) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(82) LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(83) LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code Chapter 301.

(84) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001.

(85) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(86) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body. The term does not include a protective device.

(87) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(88) Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(89) Mental health facility--A facility licensed in accordance with THSC Chapter 577.

(90) MESAV--Medicaid Eligibility Service Authorization Verification. The automated system that contains information regarding an individual's Medicaid eligibility and service authorizations.

(91) Military family member--A person who is the spouse or child, regardless of age, of:

- (A) a military member; or
- (B) a former military member.

(92) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(93) Minor home modifications--A DBMD Program service that:

(A) makes a physical adaptation to an individual's residence that:

(i) is necessary to address the individual's specific needs; and

(ii) enables the individual to function with greater independence in the individual's residence or to control his or her environment; and

(B) meets one of the following criteria:

(i) is included on the list of minor home modifications in the Deaf Blind with Multiple Disabilities Program Manual; or

(ii) is the repair or maintenance of a minor home modification purchased through the DBMD Program that:

(I) is needed after one year has elapsed from the date the minor home modification is complete;

(II) is needed for a reason other than the minor home modification was intentionally damaged, as described in §260.329(c) of this chapter (relating to Repair or Replacement of a Minor Home Modification); and

(III) is not covered by a warranty.

(94) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(95) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(96) Nursing--One or more of the following DBMD Program services:

- (A) licensed vocational nursing;
- (B) registered nursing;
- (C) specialized licensed vocational nursing; and

(D) specialized registered nursing.

(97) Nursing facility--A facility that is licensed or exempt from licensure in accordance with the THSC Chapter 242.

(98) Occupational therapy--A DBMD Program service that provides occupational therapy, as described in Texas Occupations Code §454.006.

(99) Orientation and mobility--A DBMD Program service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

(100) PAS/HAB plan--Personal Assistance Services (PAS)/Habilitation Plan. A written plan developed by an individual's service planning team and documented on the HHSC Personal Assistance Services (PAS)/Habilitation Plan form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(101) Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(102) Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(103) Person-centered planning process--The process described in §260.57 of this chapter (relating to Person-Centered Planning Process).

(104) Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

(105) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(106) Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(107) Physical therapy--A DBMD program service that provides physical therapy, as defined in Texas Occupations Code §453.001.

(108) Physician--Consistent with §558.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health or hospice services for the individual in accordance with Texas Occupations Code §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code §151.052(a)(8).

(109) Program provider--A person that has a contract with HHSC to provide DBMD Program services, excluding an FMSA.

(110) Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

(A) used only:

(i) to protect an individual from injury; or

(ii) for body positioning of the individual to ensure health and safety; and

(B) not used to modify or control behavior.

(111) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(112) Reduction--An action taken by HHSC as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by HHSC on the prior IPC.

(113) Registered nursing--A DBMD Program service that provides professional nursing, as defined in Texas Occupations Code §301.002.

(114) Related condition--As defined in 42 CFR §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(115) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affin-

ity. A more detailed explanation of this term is included in the Deaf Blind with Multiple Disabilities Program Manual.

(116) Renewal IPC--An IPC developed in accordance with §260.77 of this chapter.

(117) Residential child-care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(118) Respite--A DBMD Program service described in §260.353 of this chapter (relating to Respite).

(119) Responder--A person designated to respond to an alarm call activated by an individual.

(120) Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a chemical restraint.

(121) Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations, or activities, or restricts an individual's rights, including a restraint, a protective device, and seclusion.

(122) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §260.77 of this chapter to add a new DBMD Program service or CFC service or change the amount of an existing service.

(123) RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code Chapter 301.

(124) Seclusion--A restrictive intervention that is the involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(125) Service backup plan--A written plan developed and revised by an individual's service planning team in accordance with §260.213 of this chapter (relating to Service Backup Plans) to ensure continuity of critical program services if service delivery is interrupted.

(126) Service planning team--A team consisting of:

(A) the individual;

(B) if applicable, the individual's LAR or an actively involved person;

(C) the individual's case manager;

(D) one of the following persons who is not the case manager:

(i) the program director; or

(ii) an RN designated by the program provider;

(E) other persons whose inclusion is requested by the individual, LAR, or actively involved person, including a managed care organization service coordinator, a family member, a friend, and a teacher; and

(F) other persons selected by the program provider who are:

(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(127) Service provider--A person who is an employee or contractor of a program provider who provides a DBMD Program service or a CFC service directly to an individual.

(128) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff person, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff person, volunteer, or controlling person became a service provider, staff person, volunteer, or controlling person.

(129) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(130) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(131) Significant subaverage general intellectual functioning--Consistent with THSC §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(132) Specialized licensed vocational nursing--A DBMD Program service that provides licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(133) Specialized registered nursing--A DBMD Program service that provides registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(134) Speech-language pathology--A DBMD Program service that provides speech-language pathology as defined in Texas Occupations Code §401.001.

(135) SSA--Social Security Administration.

(136) SSI--Supplemental Security Income.

(137) Staff person--A full-time or part-time employee of a program provider, other than a service provider.

(138) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(139) Support consultation--A DBMD Program service that is defined in §264.103 of this title and may be provided an individual who chooses to participate in the CDS option.

(140) Supported employment--A DBMD Program service that provides assistance to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(141) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(142) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas State Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(143) TAS--Transition Assistance Services. A DBMD Program service provided in accordance with Chapter 272 of this title (relating to Transition Assistance Services) to an individual who is receiving institutional services and is eligible for and enrolling into the DBMD Program.

(144) Texas Workforce Commission--The state agency established under Texas Labor Code Chapter 301.

(145) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(146) TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(147) Transfer--The movement of an individual from a DBMD Program provider or a FMSA to a different DBMD Program provider or FMSA.

(148) Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.

(149) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(150) Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(151) 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 adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER B. ELIGIBILITY,  
ENROLLMENT, AND REVIEW  
DIVISION 2. ENROLLMENT PROCESS,  
PERSON-CENTERED PLANNING, AND  
REQUIREMENTS FOR SERVICE SETTINGS**

**26 TAC §260.59**

**STATUTORY AUTHORITY**

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER D. ADDITIONAL PROGRAM  
PROVIDER PROVISIONS**

**26 TAC §260.203, §260.205**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the au-

thority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

*§260.203. Qualifications of Program Provider Staff.*

(a) A program provider must employ a program director who is responsible for the program provider's day-to-day operations. The program director must:

(1) have a minimum of one year of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities and have a master's degree in a health and human services related field;

(2) have a minimum of two years of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities, and have a bachelor's degree in a health and human services related field; or

(3) have been a program director for the DBMD Program provider on or before June 15, 2010.

(b) A program provider must ensure that a case manager:

(1) has:

(A) a bachelor's degree in a health and human services related field and a minimum of two years of experience in the delivery of direct services to individuals with disabilities;

(B) an associate degree in a health and human services related field and a minimum of four years of experience providing direct services to individuals with disabilities; or

(C) a high school diploma or certificate recognized by a state as the equivalent of a high school diploma and a minimum of six years of experience providing direct services to individuals with disabilities; and

(2) either:

(A) is fluent in the individual's preferred communication methods (American sign language, tactile symbols, communication boards, pictures, or gestures); or

(B) within six months after being assigned to an individual, becomes fluent in the individual's communication methods.

(c) For purposes of subsection (d) of this section and consistent with Texas Government Code §526.0404, "deafblind-related course work" means educational courses designed to improve a person's:

(1) knowledge of deafblindness and its effect on learning;

(2) knowledge of the role of intervention and ability to facilitate the intervention process;

(3) knowledge of areas of communication relevant to deafblindness, including methods, adaptations, and use of assistive technology, and ability to facilitate the development and use of communication skills for a person with deafblindness;

(4) knowledge of the effect that deafblindness has on a person's psychological, social, and emotional development and ability to facilitate the emotional well-being of a person with deafblindness;

(5) knowledge of and issues related to sensory systems and ability to facilitate the use of the senses;

(6) knowledge of motor skills, movement, orientation, and mobility strategies and ability to facilitate orientation and mobility skills;

(7) knowledge of the effect that additional disabilities have on a person with deafblindness and the ability to provide appropriate support; or

(8) professionalism and knowledge of ethical issues relevant to the role of an intervener.

(d) A program provider must ensure that:

(1) an intervener:

(A) is at least 18 years of age;

(B) is not:

(i) the spouse of the individual to whom the intervener is assigned; or

(ii) if the individual is under 18 years of age, a parent of the individual to whom the intervener is assigned;

(C) holds a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;

(D) has at least two years of experience working with individuals with developmental disabilities; and

(E) has the ability to proficiently communicate in the functional language of the individual to whom the intervener is assigned;

(2) an intervener I:

(A) meets the requirements for an intervener described in paragraph (1) of this subsection;

(B) has at least six months of experience working with persons who have deafblindness or function as persons with deafblindness;

(C) completed at least eight semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and

(D) has completed a practicum that is at least one semester credit hour in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education;

(3) an intervener II:

(A) meets the requirements for an intervener I described in paragraph (2) of this subsection;

(B) has at least nine months of experience working with persons who have deafblindness or function as persons with deafblindness; and

(C) has completed at least an additional 10 semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and:

(4) an intervener III:

(A) meets the requirements for an intervener II described in paragraph (3)(A) of this subsection;

(B) has at least one year of experience working with persons with deafblindness or function as persons with deafblindness; and

(C) holds an associate degree or bachelor's degree in a course of study with a focus on deafblind-related course work from a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education.

(e) A program provider must ensure that a service provider who interacts directly with an individual is able to communicate with the individual.

(f) A program provider must ensure that a service provider of a therapy described in §260.355(a) of this chapter (relating to Therapies) is licensed by the State of Texas as described in §260.355(b) of this chapter.

(g) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is under 18 years of age; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field with six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate degree in rehabilitation, business, marketing, or a related human services field with one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, with two years of paid or unpaid experience providing services to people with disabilities.

(h) Documentation of the experience required by subsection (g) of this section must include:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(i) A program provider must ensure that a service provider of employment readiness:

(1) be at least 18 years of age;

(2) is not:



(A) the parent of the individual if the individual is under 18 years of age; or

(B) the spouse of the individual; and

(3) has:

(A) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; and

(B) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(i) a written competency-based assessment of the ability to document service delivery and observations of individuals receiving services; and

(ii) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals receiving services.

(j) A program provider must ensure that dental treatment is provided by a person licensed to practice dentistry or dental hygiene in accordance with Texas Occupations Code Chapter 256.

(k) A program provider must ensure that a service provider not required to meet the other education or experience requirements described in this section:

(1) is 18 years of age or older;

(2) has:

(A) a high school diploma;

(B) a certificate recognized by a state as the equivalent of a high school diploma; or

(C) the following:

(i) documentation of a proficiency evaluation of experience and competence to perform job tasks including an ability to provide the required services needed by the individual as demonstrated through a written competency-based assessment; and

(ii) at least three personal references from persons not related by blood that evidence the person's ability to provide a safe and healthy environment for the individual; and

(3) except for a service provider of chore services, either:

(A) is fluent in the communication method preferred by the individual to whom the service provider is assigned, including American sign language, tactile symbols, communication boards, pictures, and gestures; or

(B) has the ability to become fluent in the communication methods used by an individual within three months after being assigned to the individual.

(l) A program provider must ensure that:

(1) a vehicle in which a service provider transports an individual has a valid Vehicle Identification Certificate of Inspection, in accordance with state law; and

(2) a service provider who transports an individual in a vehicle has:

(A) a current Texas driver's license; and

(B) vehicle liability insurance, in accordance with state law.

(m) A service provider:

(1) must not be a parent of the individual to whom the service provider is providing any service, if the individual is under 18 years of age;

(2) must not be the spouse of the individual to whom the service provider is providing any service;

(3) must not be a relative or guardian of the individual to whom the service provider is providing an adaptive aid; and

(4) must not be a relative or guardian of the individual to whom the service provider is providing any of the following services, if the individual is 18 years of age or older:

(A) assisted living;

(B) case management;

(C) behavioral support;

(D) dental treatment;

(E) dietary services;

(F) FMS, if the individual is participating in the CDS option;

(G) occupational therapy;

(H) orientation and mobility;

(I) physical therapy;

(J) speech and language pathology;

(K) audiology; and

(L) support consultation, if the individual is participating in the CDS option.

(n) A service provider of CFC PAS/HAB must:

(1) have:

(A) a high school diploma;

(B) a certificate recognized by a state as the equivalent of a high school diploma; or

(C) both of the following:

(i) a successfully completed written competency-based assessment demonstrating the service provider's ability to perform CFC PAS/HAB tasks, including an ability to perform CFC PAS/HAB tasks required for the individual to whom the service provider will provide CFC PAS/HAB; and

(ii) at least three written personal references from persons not related by blood that evidence the service provider's ability to provide a safe and healthy environment for the individual; and

(2) meet any other qualifications requested by the individual or LAR based on the individual's needs and preferences.

(o) The program provider must maintain documentation in a service provider's employment, contract, or personal service agreement file that the service provider meets the requirements of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER F. SERVICE DESCRIPTIONS  
AND REQUIREMENTS  
DIVISION 3. REQUIREMENTS FOR OTHER  
DBMD PROGRAM SERVICES**

**26 TAC §260.341**

**STATUTORY AUTHORITY**

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

*§260.341. Employment Services.*

(a) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment meets the qualifications described in §260.203(g) of this chapter (relating to Qualifications of Program Provider Staff).

(b) Before including employment assistance on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(c) A program provider must ensure that employment assistance:

(1) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and available on the HHSC website;

(3) is not provided to an individual with the individual present at the same time that one of the following services is provided:

(A) day habilitation;

(B) transportation provided as a residential habilitation activity;

(C) supported employment;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include using Medicaid funds paid by HHSC to a program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

(d) Before including supported employment on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(e) A program provider must ensure that supported employment:

(1) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and available on the HHSC website;

(3) is not provided to an individual with the individual present at the same time that one of the following services are provided:

(A) day habilitation;

(B) transportation provided as a residential habilitation activity;

(C) employment assistance;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by HHSC to a program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

(f) Employment readiness:

(1) is assistance that prepares an individual to participate in employment;

(2) provides the following person-centered activities:

(A) teaching generalized habilitative skills necessary to prepare an individual to participate in employment;

(B) training in the use of adaptive equipment necessary to obtain and retain employment skills; and

(C) achieving generalized vocational goals consistent with the outcomes identified in an individual's IPP;

(3) is not job-task oriented;

(4) includes activities for which an individual is compensated in accordance with applicable laws and regulations;

(5) provides personal assistance for an individual who cannot manage personal care needs during employment readiness activities; and

(6) includes:

(A) transportation between an individual's place of residence and an employment readiness location;

(B) transportation from one employment readiness location to another employment readiness location; and

(C) securing transportation as described in paragraph (6)(A) or (6)(B) of this subsection.

(g) A program provider may provide employment readiness to an individual only if the individual's service planning team does not expect the individual to be competitively employed within one year after the date employment readiness begins.

(h) A program provider may not provide employment readiness to an individual who is:

(1) receiving supported employment; or

(2) engaged in competitive employment.

(i) Before employment readiness is included on an individual's enrollment IPC, renewal IPC, or revised IPC, a program provider must ensure:

(1) an HHS Employment First Discovery Tool is completed in accordance with §284.105 of this title (relating to Uniform Process) and supports the provision of employment readiness to the individual; and

(2) documentation is maintained in the individual's record that employment readiness is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Health and Human Services Commission

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



## DIVISION 4. NON-BILLABLE TIME AND ACTIVITIES

### 26 TAC §260.357

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

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◆ ◆ ◆  
**CHAPTER 262. TEXAS HOME LIVING  
(TxHmL) PROGRAM AND COMMUNITY FIRST  
CHOICE (CFC)**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §262.3, concerning Definitions; §262.5, concerning Description of TxHmL Program Services; §262.103, Process for Enrollment of Applicants; §262.202, concerning Requirements for Home and Community-Based Settings; §262.301, concerning IPC Requirements; §262.304, concerning Service Limits; §262.401, concerning Program Provider Reimbursement; and §262.701, concerning LIDDA Requirements for Providing Service Coordination in the TxHmL Program.

The amendments to §262.3, §262.5, §262.103, §262.401, and §262.701 are adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5704). These rules will be republished.

The amendments to §262.202, §262.301, and §262.304 are adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5704). These rules will not be republished.

**BACKGROUND AND JUSTIFICATION**

The adopted amendments are necessary to implement Texas Human Resources Code §32.0755, added by House Bill (H.B.) 4169, 88th Legislature, Regular Session, 2023. The adopted amendments implement a service similar to prevocational services, named employment readiness, in the Texas Home Living (TxHmL) Program, one of HHSC's §1915(c) Medicaid waiver programs.

**COMMENTS**

The 31-day comment period ended September 3, 2024.

During this period, HHSC received comments regarding the proposed rules from six commenters, including Disability Rights Texas; Texas Association of People Supporting Employment First; Texas Council for Developmental Disabilities; The Arc of Texas; Texana Center; and Advo Companies.

A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** One commenter expressed concern about the term "group setting" because it perpetuates beliefs that individuals with intellectual and developmental disabilities (IDD) are not members of the community and are not capable of work. The commenter further expressed that the term does not align with the Centers for Medicare & Medicaid Services' (CMS) intent to integrate individuals in the community.

**Response:** HHSC declines to make a change in response to the comment. The term "group setting," as defined in proposed Section 262.3(25), is used only in proposed §262.202(d) that outlines the home and community-based services (HCBS) settings requirements for settings where more than one individual

receives employment readiness, supported employment, and individualized skills and socialization. This ensures that such settings are compliant with the federal requirements in HCBS settings requirements. Furthermore, HHSC does not agree that the term perpetuates beliefs that individuals with IDD are not members of the community capable of work.

**Comment:** One commenter expressed concern that the term "job-task oriented" in proposed §262.3(48) is subjective and unmeasurable and will lead to an increase in job task-oriented activities.

**Response:** HHSC declines to make a change in response to this comment because the term is only used in the description of employment readiness in proposed §262.5(a)(21) to establish that the service is not job-task oriented.

**Comment:** Several commenters recommended HHSC revise proposed §262.3(48) to change the definition of "job-task oriented" from "focused on developing a skill related to a specific type of employment" to "focused on developing a single skill related to a specific type of employment" because its current definition is vague.

**Response:** HHSC declines to add "single" to the definition of "job-task oriented" in proposed §262.3(48). Adding "single" implies that focusing on developing multiple skills related to a specific type of employment is not job-task oriented, which is incorrect.

**Comment:** One commenter expressed concern about proposed §262.103(o)(2)(A)(ii) that adds employment readiness to the array of TxHmL Program services that may require the individual's initial individual plan of care (IPC) to include a sufficient amount of registered nursing units for the program provider's registered nurse to perform a comprehensive nursing assessment. The commenter indicated this requirement reinforces the Medical Model view of disability which perpetuates the view that a person with IDD needs treatment and is not capable of completing job tasks.

**Response:** HHSC declines to make a change in response to this comment. The requirements in proposed §262.103(o)(2)(A)(ii) ensure a person in the TxHmL Program who receives certain TxHmL services has a sufficient amount of registered nursing services for an RN to perform a comprehensive nursing assessment to ensure the individual's health, safety, and welfare in the provision of the service.

**Comment:** One commenter expressed concerns that the requirements in proposed §262.202(d), to ensure that a group setting allows an individual to control the individual's own schedule and activities, have access to the individual's food at any time, receive visitors of the individual's choosing at any time and be physically accessible and free of hazards, are irrelevant to employment readiness settings and are more appropriate for residential settings.

**Response:** HHSC declines to make changes in response to this comment because the requirements in proposed §262.202(d) were added to comply with federal HCBS settings requirements for services provided in a group setting.

**Comment:** One commenter expressed that employment readiness does not reflect evidence-based practices for employment services. The commenter also expressed concern about proposed §262.301(c)(11) requiring authorization of employment readiness to be supported by an HHSC Employment First

Discovery Tool and suggested that the HHSC Employment First Discovery Tool should only be applicable in integrated settings.

Response: HHSC declines to make a change in response to this comment. HHSC requires authorization of employment readiness to be supported by the HHSC Employment First Discovery Tool because the tool assesses the individual's employment goals and can assist the service planning team in identifying the most appropriate employment service to help the individual meet those goals.

Comment: Several commenters recommended HHSC revise proposed §262.304 to add a five-year lifetime limit to employment readiness that may only be extended after an individual attempts competitive integrated employment. The commenters emphasized the goal should be competitive integrated employment.

Response: HHSC declines to make a change in response to these comments because a lifetime limit is not person-centered and may limit the opportunities for competitive integrated employment for individuals who need more support beyond the proposed five years to prepare for employment. In addition, the annual review of service plans ensures services on an individual's plan are the most appropriate to meet their needs.

Comment: One commenter requested that HHSC improve individualized skills and socialization and expand it to incorporate employment assistance and supported employment rather than add the requirement in proposed §262.304(a)(5) that establishes a combined service limit for employment readiness and individualized skills and socialization rule.

Response: HHSC declines to make a change in response to this comment because it is outside the scope of this rule project. A change to the scope of individualized skills and socialization would require additional analysis and a change to the TxHmL waiver application that has been approved by CMS.

Comment: One commenter requested HHSC allow more flexibility in how employment readiness is provided by changing the weekly service limit in proposed §262.304(a)(5) from five days per calendar week to 30 hours per calendar week to allow the service to be provided six days a week in a community setting.

Response: HHSC declines to make changes in response to this comment because pursuant to Title 26 Texas Administrative Code (TAC) §566.7(k), the program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

Comment: One commenter stated vocational services do not cover group activities. The commenter noted that vocational rehabilitation counselors may consider employment readiness as a day program service that diminishes skills necessary for competitive, integrated employment.

Response: HHSC declines to make changes in response to this comment because vocational rehabilitation services are outside the scope of this project.

Comment: One commenter stated employment assistance and supported employment are underutilized and using these services would eliminate the need for the requirement in proposed §262.701(v), which requires a service coordinator to update an individual's person-directed plan if a modification to a service delivered in a group setting is needed.

Response: HHSC declines to make changes in response to this comment because the implementation of employment readiness is necessary for compliance with Texas Human Resources Code §32.0755, added by H.B. 4169, 88th Legislature, Regular Session, 2023.

Comment: Several commenters questioned what the parameters are for the program provider's assurance in §262.701(v)(8). The commenters requested HHSC require program providers to provide assurance that the modifications are safe and based on evidence and best practice.

Response: HHSC declines to make changes in response to these comments. Proposed §262.701(v) already requires documentation of a specific and individualized assessed need that justifies the modification and the individual's or legally authorized representative's signature evidencing informed consent to the modification. The documentation around assessing need and justifying the modification encompasses an assurance that the modifications are safe and based on evidence of need and best practices.

Comment: One commenter opposed the implementation of employment readiness, stating it is not a needed service and it is similar to day habilitation. The commenter expressed that employment assistance and supported employment services are existing services that prepare an individual for paid employment in the community.

Response: HHSC declines to make changes in response to this comment because the implementation of employment readiness is necessary for compliance with Texas Human Resources Code §32.0755, added by H.B. 4169, 88th Legislature, Regular Session, 2023.

Comment: One commenter expressed concern that the proposed rules do not include detailed information about employment readiness including performance standards, service standards, and requirements for program providers.

Response: HHSC declines to make changes in response to this comment. Service delivery requirements that include detailed service description are in the certification standards that are outside the scope of this rule project. In addition, the TxHmL Billing Requirements which is not within the scope of this rule project will provide detailed information about the service including detailed description, billable and non-billable activities, qualified service providers, and documentation requirements.

Comment: One commenter recommended HHSC invest in the development of individualized skills and socialization, employment assistance, and supported employment services to ensure every person has access to integrated, community-based activities and employment. The review of these services should cover the service rates, flexibility in the delivery of services, training, and transition support from Texas Workforce Commission - Vocational Rehabilitation Program services, transportation, long-term counselling for employment success, ongoing service provider training, and development of expertise in employment issues at the state level.

Response: HHSC declines to make changes in response to these comments because it is outside the scope of this rule project.

Comment: Several commenters requested that HHSC add a requirement that allows individuals who are competitively employed to receive employment readiness for professional development.

Response: HHSC declines to make changes in response to this comment. Employment assistance, a TxHmL Program service described in §262.5(a)(19), can be used to gain additional employment skills. Furthermore, proposed §262.5(a)(21) describes employment readiness as assistance that prepares an individual to participate in employment.

Comment: Three commenters requested that HHSC include professional and vocational skills development experience in the service provider requirements for employment readiness.

Response: HHSC declines to make changes in response to this comment because it is outside the scope of this rule project. Service provider requirements are in the certification standards and the TxHmL Billing Requirements that are not part of this rule project.

Comment: One commenter requested that HHSC allow "enclave settings," i.e., settings that allow the exclusive employment of individuals with intellectual and developmental disabilities to complete contract work as part of their employment readiness service.

Response: HHSC declines to make changes in response to this comment because "enclave setting" is outside the scope of this project. Based on the interpretation of technical guidance from the Centers for Medicaid & Medicare Services, HHSC considers enclave settings, also known as small group employment, to be a distinct service from employment readiness, because of the differences in focus, structure, and goals.

HHSC made changes to the rules that are not in response to comments.

HHSC made a minor editorial change in §262.3(48) for consistency in the waiver program rules in the spelling of "job-task oriented."

HHSC updated references to the Texas Government Code citations in proposed §262.3(53) and (65) to implement H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

HHSC updated references in §263.3, §263.5, §263.104, §263.601, and §263.901 to all rules administratively transferred from Title 40 TAC to Title 26 TAC.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §262.3, §262.5

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing pre-occupational or similar services to persons in a Medicaid waiver program.

§262.3. *Definitions.*

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

- (1) Abuse--
  - (A) physical abuse;
  - (B) sexual abuse; or
  - (C) verbal or emotional abuse.
- (2) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:
  - (A) interactions with the applicant or individual;
  - (B) availability to the applicant or individual for assistance or support when needed; and
  - (C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.
- (3) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- (4) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.
- (5) Applicant--A Texas resident seeking services in the Texas Home Living (TxHmL) Program.
- (6) Audio-only--An interactive, two-way audio communication platform that only uses sound.
- (7) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.
- (8) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (9) Calendar day--Any day, including weekends and holidays.
- (10) CDS option--Consumer directed services option. A service delivery option as defined in §264.103 of this title (relating to Definitions).
- (11) CFC--Community First Choice.
- (12) CFC ERS--CFC emergency response services.
- (13) CFC FMS--The term used for financial management services on the individual plan of care (IPC) of an applicant or individual if the applicant will receive or the individual receives only CFC personal assistance services (PAS)/habilitation (HAB) through the CDS option.
- (14) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant will receive or the individual receives only CFC PAS/HAB through the CDS option.
- (15) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(16) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(17) Comprehensive nursing assessment--A comprehensive physical and behavioral assessment of an individual, including the individual's health history, current health status, and current health needs, that is completed by a registered nurse (RN).

(18) Contract--A provisional contract or a standard contract.

(19) Delegated nursing task--A nursing task delegated by a registered nurse to an unlicensed person in accordance with:

(A) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(20) DFPS--The Department of Family and Protective Services.

(21) DID--Determination of intellectual disability. This term has the meaning set forth in §304.102 of this title (relating to Definitions).

(22) DID report--Determination of intellectual disability report. This term has the meaning set forth in §304.102 of this title.

(23) EVV--Electronic visit verification. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).

(24) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(25) Group setting--A setting, other than an individual's residence, in which more than one individual or other person receives employment readiness, employment assistance, supported employment, or a similar service.

(26) FMS--Financial management services.

(27) FMSA--Financial management services agency. As defined in §264.103 of this title, an entity that provides FMS to an individual participating in the CDS option.

(28) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(29) HCS--Home and Community-based Services. Services provided through the HCS Program operated by the Texas Health and Human Services Commission (HHSC) as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(30) Health maintenance activities--This term has the meaning set forth in 22 TAC §225.4 (relating to Definitions).

(31) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by a

licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. This includes tasks delegated by an RN; health maintenance activities, that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(32) HHSC--The Texas Health and Human Services Commission.

(33) Hospital--A public or private institution licensed or exempt from licensure in accordance with Texas Health and Safety Code (THSC) Chapters 13, 241, 261, or 552.

(34) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(35) ICAP--Inventory for Client and Agency Planning. An instrument designed to assess a person's needs, skills, and abilities.

(36) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

- (A) licensed in accordance with THSC Chapter 252; or
- (B) certified by HHSC, including a state supported living center.

(37) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(38) ID/RC Assessment--Intellectual Disability/Related Conditions Program Assessment. A form used by HHSC for level of care determination and level of need assignment.

(39) Implementation plan--A written document developed by a program provider for an individual for each TxHmL Program service, except community support, and for each CFC service, except CFC support management, on the individual's IPC to be provided by the program provider. An implementation plan includes:

- (A) a list of outcomes identified in the person-directed plan that will be addressed using TxHmL Program services and CFC services;
- (B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:
  - (i) observable, measurable, and outcome-oriented;
  - (ii) derived from assessments of the individual's strengths, personal goals, and needs;
- (C) a target date for completion of each objective;
- (D) the number of units of TxHmL Program services and CFC services needed to complete each objective;
- (E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and
- (F) the signature and date of the individual, legally authorized representative (LAR), and the program provider.

(40) In person or in-person--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

(41) Individual--A person enrolled in the TxHmL Program.

(42) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the TxHmL Program.

(43) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(44) Intellectual disability--This term has the meaning set forth in §304.102 of this title.

(45) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(46) IPC cost--Estimated annual cost of TxHmL Program services included on an IPC.

(47) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(48) Job-task oriented--Focused on developing a skill related to a specific type of employment.

(49) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(50) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(51) LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(52) LON--Level of need. An assignment given by HHSC to an applicant or individual that is derived from the ICAP service level score and from selected items on the ID/RC Assessment.

(53) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001.

(54) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(55) Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(56) Mental health facility--A facility licensed in accordance with THSC Chapter 577, Private Mental Hospitals and Other Mental Health Facilities.

(57) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(58) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(59) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who voluntarily assist an individual to achieve the individual's identified goals.

(60) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(61) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(62) PDP--Person-directed plan. A plan developed with an applicant or individual and LAR using an HHSC form that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety; and

(B) includes the setting for each service, which must be selected by the individual or LAR from setting options.

(63) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC §533A.035.

(64) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.



(65) Platform--This term has the meaning set forth in Texas Government Code §521.0001.

(66) Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook.

(67) Pre-move site review--A review conducted by the service coordinator in accordance with HHSC's IDD PASRR Handbook.

(68) Professional therapies--Services that consist of the following:

- (A) audiology services;
- (B) behavioral support;
- (C) dietary services;
- (D) occupational therapy services;
- (E) physical therapy services; and
- (F) speech and language pathology.

(69) Program provider--A person, as defined in §52.3 of this title (relating to Definitions), that has a contract with HHSC to provide TxHmL Program services, excluding an FMSA.

(70) Provisional contract--A contract that HHSC enters into with a program provider in accordance with §52.39 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 §52.39(e) of this title.

(71) Related condition--A severe and chronic disability that:

(A) is attributed to:

- (i) cerebral palsy or epilepsy; or
- (ii) any other condition, other than mental illness,

found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

(72) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the TxHmL Program Billing Requirements.

(73) Renewal IPC--An IPC developed for an individual in accordance with §262.302(a) of this chapter (relating to Renewal and Revision of an Individual's IPC).

(74) Residential child care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(75) Revised IPC--An IPC that is revised during an IPC year in accordance with §262.302 of this chapter to add a new TxHmL Program service or CFC service or change the amount of an existing service.

(76) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(77) Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(78) Service coordination--A service as defined in §331.5 of this title (relating to Definitions).

(79) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(80) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraph (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) the service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or ICF/IID or has enrolled in the TxHmL Program as a diversion from admission to an institution, including a nursing facility or ICF/IID, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) the service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly in-

volved in the delivery of services to persons with an intellectual or developmental disability.

(81) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(82) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(83) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(84) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(85) Staff member--An employee or contractor of a TxHmL Program provider.

(86) Standard contract--A contract that HHSC enters into with a program provider in accordance with §52.41 of this title (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §52.41(d) of this title.

(87) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(88) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(89) Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(90) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(91) Telehealth service--This term has the meaning set forth in Texas Occupations Code §111.001.

(92) Temporary Admission--A stay in a facility listed in §262.505(a) of this chapter (relating to Suspension of TxHmL Program Services and CFC Services) for 270 calendar days or less or, if an extension is granted in accordance with §262.505(h) of this chapter, a stay in such a facility for more than 270 calendar days.

(93) THSC--Texas Health and Safety Code. Texas statute relating to health and safety.

(94) Transfer IPC--An IPC that is developed in accordance with §262.501 of this chapter (relating to Process for Individual to Transfer to a Different Program Provider or FMISA) or §262.502 of this chapter (relating to Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider) when an individual transfers to another program provider or chooses a different service delivery option.

(95) Transition plan--A written plan developed in accordance with §303.701 of this title (relating to Transition Planning for a Designated Resident) for an applicant residing in a nursing facility who is enrolling in the TxHmL Program.

(96) Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using HHSC Individual Transportation Plan form available on the HHSC website. A transportation plan is used to document how community support will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(97) TxHmL Program--The Texas Home Living Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act. The TxHmL Program provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(98) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(99) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(100) Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(101) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

#### §262.5. Description of TxHmL Program Services.

(a) TxHmL Program services are described in this section and in Appendix C of the TxHmL Program waiver application approved by CMS.

(1) Adaptive aids include devices, controls, or items that are necessary to address specific needs identified in an individual's service plan. Adaptive aids enable an individual to maintain or increase

the ability to perform ADLs or the ability to perceive, control, or communicate with the environment in which the individual lives.

(2) Audiology is the provision of audiology as defined in the Texas Occupations Code Chapter 401.

(3) Speech and language pathology is the provision of speech-language pathology as defined in the Texas Occupations Code Chapter 401.

(4) Occupational therapy is the provision of occupational therapy as described in the Texas Occupations Code Chapter 454.

(5) Physical therapy is the provision of physical therapy as defined in the Texas Occupations Code Chapter 453.

(6) Dietary is the provision of nutrition services as defined in the Texas Occupations Code Chapter 701.

(7) Behavioral support is the provision of specialized interventions that:

(A) assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life; and

(B) improve an individual's quality of life.

(8) Day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual. Day habilitation does not include in-home day habilitation.

(9) In-home day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in the individual's residence.

(10) Dental treatment is:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(11) Minor home modifications are physical adaptations to an individual's residence to address specific needs identified by an individual's service planning team.

(12) Licensed vocational nursing is the provision of licensed vocational nursing as defined in the Texas Occupations Code Chapter 301.

(13) Registered nursing is the provision of professional nursing as defined in the Texas Occupations Code Chapter 301.

(14) Specialized registered nursing is the provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(15) Specialized licensed vocational nursing is the provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(16) Community support provides transportation to an individual.

(17) Respite provides temporary relief for an unpaid caregiver of an individual in a location other than the individual's residence.

(18) In-home respite provides temporary relief for an unpaid caregiver of an individual in the individual's residence.

(19) Employment assistance provides assistance to help an individual locate paid employment in the community.

(20) Supported employment provides assistance, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(21) Employment readiness is assistance that prepares an individual to participate in employment. Employment readiness services are not job-task oriented.

(b) The services described in this subsection are for an individual who is receiving at least one TxHmL Program service through the CDS option.

(1) FMS is a service defined in §264.103 of this title (relating to Definitions).

(2) Support consultation is a service defined in §264.103 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

### 26 TAC §262.103

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

§262.103. *Process for Enrollment of Applicants.*

(a) HHSC notifies a LIDDA, in writing, when the opportunity for enrollment in the TxHmL Program becomes available in the LIDDA's local service area and directs the LIDDA to offer enrollment to the applicant:

(1) whose interest list date, assigned in accordance with §262.102 of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by HHSC;

(2) whose name is not coded in the HHSC data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue in an amount that would allow HHSC to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, a LIDDA must offer enrollment in the TxHmL Program in writing and deliver it to the applicant or LAR by United States mail or by hand delivery.

(c) A LIDDA must offer enrollment in the TxHmL Program to an applicant described in subsection (a)(2) or (3) of this section in accordance with HHSC's procedures.

(d) A LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of enrollment in the TxHmL Program within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the TxHmL Program, the LIDDA terminates those services that are similar to services provided in the TxHmL Program; and

(2) the HHSC Deadline Notification form, which is available on the HHSC website.

(e) If an applicant or LAR responds to an offer of enrollment in the TxHmL Program, a LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports, using the HHSC Explanation of Services and Supports document which is available on the HHSC website;

(2) provide the applicant and LAR both an oral and a written explanation of all TxHmL Program services and CFC services using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website; and

(3) give the applicant or LAR the HHSC Waiver Program Verification of Freedom of Choice form, which is available on the HHSC website to document the applicant's choice between the TxHmL Program or the ICF/IID Program.

(f) A LIDDA must withdraw an offer of enrollment in the TxHmL Program made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of enrollment in the TxHmL Program;

(2) within seven calendar days after the applicant or LAR receives the HHSC Waiver Program Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not use the form to document the applicant's choice of the TxHmL Program;

(3) within 30 calendar days after the applicant or LAR receives the contact information regarding all available program providers in the LIDDA's local service area in accordance with subsection (k)(2)(A) of this section, the applicant or LAR does not document a choice of a program provider using the HHSC Documentation of Provider Choice form, which is available on the HHSC website;

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and HHSC has approved the withdrawal of the offer; or

(5) the applicant has moved out of the State of Texas.

(g) If a LIDDA withdraws an offer of enrollment in the TxHmL Program made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If an applicant is currently receiving services from a LIDDA that are funded by general revenue and the applicant declines the offer of enrollment in the TxHmL Program, the LIDDA must terminate those services that are similar to services provided in the TxHmL Program.

(i) If a LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §301.155 of this title (relating to Notification and Appeals Process).

(j) A LIDDA must retain in an applicant's record:

(1) the HHSC Waiver Program Verification of Freedom of Choice form;

(2) the HHSC Documentation of Provider Choice form;

(3) the HHSC Deadline Notification form; and

(4) any correspondence related to the offer of enrollment in the TxHmL Program.

(k) If an applicant or LAR accepts the offer of enrollment in the TxHmL Program, the LIDDA must compile and maintain information necessary to process the applicant's request for enrollment in the TxHmL Program.

(1) The LIDDA must complete an ID/RC Assessment in accordance with §262.104(a)(1) of this subchapter (relating to LOC Determination).

(A) The LIDDA must:

(i) do one of the following:

(I) conduct a DID in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability) except that the following activities must be conducted in person:

(-a-) a standardized measure of the individual's intellectual functioning using an appropriate test based on the characteristics of the individual; and

(-b-) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's adaptive behavior level; or

(II) review and endorse a DID report in accordance with §304.403 of this title (relating to Review and Endorsement of a Determination of Intellectual Disability Report); and

(ii) determine whether the applicant has been diagnosed by a licensed physician as having a related condition.

(B) The LIDDA must:

(i) conduct an ICAP assessment in person; and

(ii) recommend an LON assignment to HHSC in accordance with §262.105 of this subchapter (relating to LON Assignment).

(C) The LIDDA must enter the information from the completed ID/RC Assessment in the HHSC data system and electronically submit the information to HHSC in accordance with §262.104(a)(2) of this subchapter and §262.105(a) of this subchapter and submit supporting documentation as required by §262.106 of this subchapter (relating to HHSC Review of LON).

(2) The LIDDA must:

(A) provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area;

(B) arrange for meetings or visits with potential program providers as requested by the applicant or the LAR; and

(C) ensure that the applicant's or LAR's choice of a program provider is documented on the HHSC Documentation of Provider Choice form and that the form is signed by the applicant or LAR and retained by the LIDDA in the applicant's record.

(3) The LIDDA must assign a service coordinator who, together with other members of the service planning team, must:

(A) develop a PDP; and

(B) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form, which is available on the HHSC website, to determine the number of CFC PAS/HAB hours the applicant needs.

(4) The CFC PAS/HAB assessment form required by paragraph (3)(B) of this subsection must be completed in person with the individual unless the following conditions are met, in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(l) A service coordinator must:

(1) in accordance with Chapter 264, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the applicant or LAR of the applicant's right to participate in the CDS option; and

(B) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §264.108 of this title (relating to Services Available Through the CDS Option); and

(2) if the applicant or LAR chooses to participate in the CDS option, comply with §262.701(r) of this chapter (relating to LIDDA Requirements for Providing Service Coordination in the TxHmL Program).

(m) The service coordinator must develop an initial IPC with the applicant or LAR based on the PDP and in accordance with §262.301 of this chapter (relating to IPC Requirements).

(n) If an applicant or LAR chooses to receive a TxHmL Program service or CFC service provided by a program provider, the service coordinator must review the initial IPC with potential program providers as requested by the applicant or the LAR.

(o) A service coordinator must:

(1) ensure that the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment, unless:

(A) nursing services are not on the initial IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on the HHSC Nursing Task Screening Tool form; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician;

(2) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the initial IPC for the program provider's RN to perform a comprehensive nursing assessment as required by paragraph (1) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, employment readiness, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB from the program provider, will result in the applicant not receiving the service unless:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the initial IPC for a comprehensive nursing assessment by the program provider's RN in the applicant's record;

(3) negotiate and finalize the initial IPC and the date services will begin with the selected program provider, consulting with HHSC if necessary to reach agreement with the selected program provider on the content of the initial IPC and the date services will begin;

(4) ensure that the applicant or LAR signs and dates the initial IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(5) ensure that the selected program provider signs and dates the initial IPC, demonstrating agreement that the services will be provided to the applicant; and

(6) sign and date the initial IPC to demonstrate that the service coordinator agrees that the requirements described in §262.301(c) of this chapter have been met.

(p) A service coordinator must:

(1) provide an oral and written explanation to the applicant or LAR of the following information using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website:

(A) the eligibility requirements for TxHmL Program services as described in §262.101(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §262.101(b) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §262.101(c) of this subchapter to applicants who receive MAO Medicaid; and

(2) provide an oral and written explanation to the applicant or LAR of:

(A) the reasons TxHmL Program services may be terminated as described in §262.507 of this chapter (relating to Termination of TxHmL Program Services and CFC Services with Advance Notice) and §262.508 of this chapter (relating to Termination of TxHmL Program Services and CFC Services without Advance Notice); and

(B) if the applicant's PDP includes CFC services, the reasons CFC services may be terminated as described in §262.507 and §262.508 of this chapter.

(q) After an initial IPC is finalized and signed in accordance with subsection (o) of this section, the LIDDA must:

(1) enter the information from the initial IPC in the HHSC data system and electronically submit the information to HHSC;

(2) keep the original initial IPC in the individual's record;

(3) ensure the information from the initial IPC entered in the HHSC data system and electronically submitted to HHSC contains information identical to the information on the initial IPC; and

(4) submit other required enrollment information to HHSC;

(r) HHSC notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. If the enrollment is approved, HHSC authorizes the applicant's enrollment in the TxHmL Program through the HHSC data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the TxHmL Program.

(s) The selected program provider and the individual or LAR must develop:

(1) an implementation plan for:

(A) TxHmL Program services, except for community support, that is based on the individual's PDP and initial IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if community support is included on the PDP.

(t) Before the applicant's service begin date, a LIDDA must provide to the selected program provider and FMSA, if applicable:

(1) copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations;

(2) the completed ID/RC Assessment;

(3) the IPC;

(4) the applicant's PDP; and

(5) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(u) In accordance with §262.401(a)(5)(N) of this chapter (relating to Program Provider Reimbursement), if a selected program provider provides services before the date of an applicant's enrollment into the TxHmL Program, HHSC does not pay the program provider for the services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. PERSON-CENTERED PLANNING AND SERVICE SETTINGS

### 26 TAC §262.202

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

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## SUBCHAPTER D. DEVELOPMENT AND REVIEW OF AN IPC

### 26 TAC §262.301, §262.304

#### STATUTORY AUTHORITY

The amendment are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

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## SUBCHAPTER E. REIMBURSEMENT BY HHSC

### 26 TAC §262.401

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

#### §262.401. Program Provider Reimbursement.

##### (a) Program provider reimbursement.

(1) HHSC pays a program provider for services as described in this paragraph.

(A) HHSC pays for community support, nursing, in-home respite, respite, employment readiness, day habilitation, in-home day habilitation, employment assistance, supported employment, professional therapies, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) HHSC pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item or service and, if requested, a requisition fee in accordance with the TxHmL Program Billing Requirements available on the HHSC website.

(C) HHSC pays for CFC ERS based on the actual cost of the service not to exceed the reimbursement rate ceiling for CFC ERS.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in §52.121 of this title (relating to Claims Payment) and the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers.

(3) If an individual's TxHmL Program services or CFC services are suspended or terminated, a program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may submit a claim for a service provided on the first calendar day of the suspension or termination.

(4) If a program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by HHSC in the TxHmL Program Billing Requirements and other documentation as required by the TxHmL Program Billing Requirements.

(5) HHSC does not pay a program provider for a service or recoups any payments made to the program provider for a service if:

(A) the individual receiving the service was, at the time the service was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) the service was not included on the signed and dated IPC of the individual in effect at the time the service was provided;

(C) the service was not provided in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) the service was not documented in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(E) the program provider did not comply with §52.109 of this title (relating to Records);

(F) the claim for the service was not prepared and submitted in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements Guidelines for HCS and TxHmL Program Providers;

(G) the program provider did not have the documentation described in subsection (a)(4) of this section;

(H) before including employment assistance on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment assistance was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §701 et seq.) or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) before including supported employment on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that supported employment was not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(J) employment readiness, if before including the employment readiness on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment readiness was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(K) HHSC determines that the service would have been paid for by a source other than the TxHmL Program;

(L) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(M) the service was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §262.301 of this subchapter (relating to IPC Requirements);

(N) the service was not provided in accordance with the PDP or the implementation plan;

(O) the service was provided before the individual's date of enrollment into the TxHmL Program;

(P) for community support, the service was not provided in accordance with a transportation plan and §262.5(a)(16) of this chapter (relating to Description of TxHmL Program Services);

(Q) the service was not provided; or

(R) for CFC PAS/HAB, in-home day habilitation, and in-home respite, if the service claim for the service did not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval).

(6) A program provider must refund to HHSC any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from HHSC, whichever is earlier.

(7) Except as provided in paragraph (8) of this subsection, if HHSC approves an LOC requested in accordance with §262.104(b)(3) of this chapter (relating to LOC Determination), HHSC pays a program provider for services provided to an individual for a period of not more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(8) If HHSC determines that an ID/RC Assessment was submitted more than 180 calendar days after the expiration date of the previous ID/RC Assessment because of circumstances beyond a program provider's control, HHSC may pay the program provider for a period of more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(9) HHSC does not withhold payments to a program provider if a LIDDA fails to enter information from an individual's renewal IPC and the program provider continues to provide services in accordance with the most recent IPC authorized by HHSC.

(b) Provider fiscal compliance reviews.

(1) HHSC conducts provider fiscal compliance reviews to determine a program provider is in compliance with:

(A) this chapter;

(B) the TxHmL Program Billing Requirements;

(C) the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) Chapter 52, Subchapter C of this title (relating to Requirements of a Contractor); and

(E) the program provider's Community Services Contract-Provider Agreement.

(2) HHSC conducts provider fiscal compliance reviews in accordance with the Provider Fiscal Compliance Review Protocol set forth in the TxHmL Program Billing Requirements and the CFC Billing Requirements for HCS and TxHmL Program Providers. As a result of a provider fiscal compliance review, HHSC may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with HHSC's instructions, a corrective action plan that improves the program provider's billing practices.

(3) A corrective action plan required by HHSC in accordance with paragraph (2)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to HHSC within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by HHSC before implementation.

(4) Within 30 calendar days after HHSC receives a corrective action plan, HHSC notifies the program provider if HHSC approves the corrective action plan or if the plan requires changes.

(5) If HHSC requires a program provider to develop and submit a corrective action plan in accordance with paragraph (2)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §262.602 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. HHSC notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(6) If a program provider does not submit a corrective action plan or complete a required corrective action within the time frames described in paragraph (3) of this subsection, HHSC may



impose a vendor hold on payments due to the program provider until the program provider takes the corrective action.

(7) If a program provider does not submit a corrective action plan or complete a required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (6) of this subsection, HHSC may terminate the contract.

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## SUBCHAPTER H. LIDDA REQUIREMENTS

### 26 TAC §262.701

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

*§262.701. LIDDA Requirements for Providing Service Coordination in the TxHmL Program.*

(a) A LIDDA must offer TxHmL Program services to an applicant in accordance with §262.103 of this chapter (relating to Process for Enrollment of Applicants).

(b) A LIDDA must process enrollments of individuals in the TxHmL Program in accordance with §262.103 of this chapter.

(c) A LIDDA must be objective in the process to assist an individual or LAR in the selection of a program provider or FMSA and train all LIDDA staff who may assist an individual or LAR in the process.

(d) A LIDDA must, upon the enrollment of an individual and annually thereafter, inform the individual or LAR orally and in writing of the following:

- (1) the telephone number of the LIDDA to file a complaint;
- (2) the toll-free telephone number of the HHSC IDD Ombudsman, 1-800-252-8154, to file a complaint; and
- (3) the toll-free telephone number of DFPS, 1-800-647-7418, to report an allegation of abuse, neglect, or exploitation.

(e) A LIDDA must maintain for each individual for an IPC year:

- (1) a copy of the IPC;

(2) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

(3) a copy of the ID/RC Assessment;

(4) documentation of the activities performed by the service coordinator in providing service coordination; and

(5) any other pertinent information related to the individual.

(f) For an individual receiving TxHmL Program services and CFC services within a LIDDA's local service area, the LIDDA must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) A LIDDA must ensure that a service coordinator is an employee of the LIDDA and meets the requirements of this subsection.

(1) A service coordinator must meet the minimum qualifications and LIDDA staff training requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), except as described in paragraph (2) of this subsection.

(2) Notwithstanding §331.19(b) of this title (relating to Staff Person Training), a service coordinator must complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension of the six month timeframe is granted by HHSC.

(3) A service coordinator must receive training about the following within the first 90 calendar days after beginning service coordination duties:

(A) rules governing the TxHmL Program and CFC; and

(B) Chapter 264 of this title (relating to Consumer Directed Services Option).

(h) A LIDDA must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-centered planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service or CFC service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) coordinates and develops an individual's IPC based on the individual's PDP;

(4) coordinates and monitors the delivery of TxHmL Program services and CFC services and non-TxHmL Program and non-CFC services; and

(5) document whether an individual progresses toward desired outcomes identified on the individual's PDP from the individual's and LAR's perspectives.

(i) A LIDDA must inform an individual or LAR of the name of the individual's service coordinator and how to contact the service coordinator.

(j) A service coordinator must:

(1) assist the individual or LAR or actively involved person in exercising the legal rights of the individual;

(2) provide an individual, LAR, or family member with a written copy of the booklet, *Your Rights in the Texas Home Living (TxHmL) Program*, available on the HHSC website, and an oral explanation of the rights described in the booklet:

(A) at the time the individual enrolls in the TxHmL Program;

(B) when the booklet is revised;

(C) upon request of the individual, LAR, or family member; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends;

(3) document compliance with paragraph (2) of this subsection in the individual's record and include:

(A) the signature of the individual or LAR; and

(B) the signature of the service coordinator;

(4) ensure that the individual and LAR participate in developing a PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated annually and if the individual's needs or outcomes change;

(5) if a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, discuss with the service planning team to determine whether the techniques will be approved by the service planning team;

(6) if notified by the program provider that an individual or LAR has refused a comprehensive nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of community support, day habilitation, in-home day habilitation, employment readiness, employment assistance, supported employment, respite, or CFC PAS/HAB:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, in-home day habilitation, employment readiness, employment assistance, supported employment, respite, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) inform the individual or LAR of decisions regarding denial, suspension, reduction, or termination of services and the individual's or LAR's right to request a fair hearing as described in §262.601 of this chapter (relating to Fair Hearing); and

(8) in accordance with §262.501 (relating to Process for Individual to Transfer to a Different Program Provider or FMSA), manage the process to transfer an individual's TxHmL Program services and CFC services from one program provider to another or transfer from one FMSA to another.

(k) When a service coordinator becomes aware that a change to an individual's PDP or IPC may be needed, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons.

(l) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service or a CFC service from a program provider, submit to the program provider and the individual or LAR:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(m) A service coordinator must:

(1) complete the HHSC TxHmL Service Coordination Notification form with the individual or LAR and provide a copy of the completed form to the individual or LAR:

(A) upon receipt of HHSC approval of the enrollment of the individual;

(B) if the form is revised;

(C) at the request of the individual or LAR; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends; and

(2) retain a copy of the completed form in the individual's record.

(n) A service coordinator must conduct:

(1) a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility or as a diversion from admission to a nursing facility; and

(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(o) A service coordinator must have contact with an individual in person, by videoconferencing, or telephone to provide service coordination during a month in which it is anticipated that the individual will not receive a TxHmL Program service unless:

(1) the individual's TxHmL Program services have been suspended; or

(2) the service coordinator had an in-person contact with the individual that month to comply with §331.11(d) of this title (relating to LIDDA's Responsibilities).

(p) In addition to the requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), a LIDDA must:

(1) comply with:

(A) this subchapter;

(B) Chapter 264 of this title; and

(C) Chapter 301, Subchapter M of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(2) ensure that a rights protection officer, as required by §334.113 of this title (relating to Rights Protection Officer at a State MR Facility or MRA), who receives a copy of an HHSC initial intake report or a final investigative report from an FMSA, in accordance with §264.702 of this title (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Service Provider) or §264.703 of this title (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Staff Person or a Controlling Person of an FMSA), gives a copy of the report to the individual's service coordinator.

(q) A service coordinator must:

(1) at least annually, in accordance with Chapter 264, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in §264.108 of this title (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(r) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR of all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on HHSC Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the services provided through the CDS option; and

(4) develop with the individual or LAR and other members of the service planning team a transportation plan if an individual's PDP includes community support to be delivered through the CDS option.

(s) For an individual participating in the CDS option, a service coordinator must recommend that HHSC terminate the individual's participation in the CDS option if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety, or welfare; or

(2) the individual, LAR, or designated representative has not complied with Chapter 264, Subchapter B (relating to Responsibilities of Employers and Designated Representatives).

(t) To make a recommendation described in subsection (s) of this section, a service coordinator must submit the following documentation to HHSC:

(1) the services the individual receives through the CDS option;

(2) the reason why the recommendation is made;

(3) a description of the attempts to resolve the issues before making the recommendation; and

(4) any other supporting documentation, as appropriate.

(u) A service coordinator must do the following regarding responsibilities related to EVV:

(1) for an applicant who will receive a service that requires the use of EVV from the program provider or through the CDS option:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the applicant or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraph (A) - (C) of this paragraph before the individual's enrollment; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(2) for an individual who will receive a service that requires the use of EVV from the program provider or who is transferring to another program provider or LIDDA and will receive a service that requires the use of EVV from the program provider or through the CDS option:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraphs (A)-(C) of this paragraph on or before the effective date of the transfer to another program provider or LIDDA; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record; and

(3) for an individual who will receive a service that requires the use of EVV through the CDS option or who will transfer to another FMSA and is receiving a service requiring the use of EVV:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraphs (A)-(C) of this paragraph before the individual receives the EVV required service through the CDS option or on or before the effective date of the transfer to another FMSA; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record.

(v) If notified by a program provider that a requirement described in §262.202 (d)(1) of this chapter (relating to Requirements for Home and Community-Based Settings), needs to be modified, a service coordinator must update the individual's PDP to include the following:

- (1) a description of the specific and individualized assessed need that justifies the modification;
- (2) a description of the positive interventions and supports that were tried but did not work;
- (3) a description of the less intrusive methods of meeting the need that were tried but did not work;
- (4) a description of the condition that is directly proportionate to the specific assessed need;
- (5) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;
- (6) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
- (7) the individual's or LAR's signature evidencing informed consent to the modification; and
- (8) the program provider's assurance that the modification will cause no harm to the individual.

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



## CHAPTER 263. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

The Texas Health and Human Services Commission (HHSC) adopts amendments to §263.3, concerning Definitions; §263.5, concerning Description of HCS Program Services; §263.104, concerning Process for Enrollment of Applicants; §263.301, concerning IPC Requirements; §263.304, concerning Service Limits; §263.501, concerning Requirements for Home and Community-Based Settings; §263.601, concerning Program Provider Reimbursement; and §263.901, concerning LIDDA Requirements for Providing Service Coordination in the HCS Program.

The amendments to §263.3, §263.5, §263.104, §263.601, and §263.901 are adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5721). This rule will be republished.

The amendments to §263.301, §263.304, and §263.501 are adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5721). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The adopted amendments are necessary to implement Texas Human Resources Code §32.0755, added by House Bill (H.B.) 4169, 88th Legislature, Regular Session, 2023. The adopted amendments implement a service similar to prevocational services, named employment readiness, in the Home and Community-based Services (HCS) Program, one of HHSC's §1915(c) Medicaid waiver programs.

### COMMENTS

The 31-day comment period ended September 3, 2024.

During this period, HHSC received comments regarding the proposed rules from six commenters, including Disability Rights Texas; Texas Association of People Supporting Employment First; Texas Council for Developmental Disabilities; The Arc of Texas; Texana Center; and Advo Companies.

A summary of comments relating to the rules and HHSC's responses follows.

**COMMENT:** One commenter expressed concern about the term "group setting" because it perpetuates beliefs that individuals with intellectual and developmental disabilities (IDD) are not members of the community and are not capable of work. The commenter further expressed that the term does not align with Centers for Medicare and Medicaid Services' (CMS) intent to integrate individuals in the community.

**RESPONSE:** HHSC declines to make a change in response to the comment. The term "group setting," as defined in proposed Section 263.3(36), is used only in proposed §263.501 that outlines the home and community-based services (HCBS) settings requirements for settings where more than one individual receives employment readiness, supported employment, and individualized skills and socialization. This ensures such a setting is compliant with the federal requirements in HCBS settings. Furthermore, HHSC does not agree that the term perpetuates the belief that individuals with IDD are not members of the community capable of work.

**COMMENT:** One commenter expressed concern that the term "job-task oriented" in proposed §263.3(56) is subjective and unmeasurable and will lead to an increase in job task-oriented activities.

**RESPONSE:** HHSC declines to make a change in response to this comment because the term is only used in the description of employment readiness in proposed §263.5(a)(26) to establish that the service is not job-task oriented.

**COMMENT:** Several commenters recommended HHSC revise proposed §263.3(56) to change the definition of "Job-task oriented" from "focused on developing a skill related to a specific type of employment" to "focused on developing a single skill related to a specific type of employment" because its current definition is vague.

**RESPONSE:** HHSC declines to add "single" to the definition of "job-task oriented" in proposed §263.3(56). Adding "single" implies that focusing on developing multiple skills related to a specific type of employment is not job-task oriented, which is incorrect.

**COMMENT:** One commenter expressed concerns about proposed §263.104(k)(9) that adds employment readiness to the array of HCS Program services that may require the individual's initial individual plan of care (IPC) to include a sufficient amount of registered nursing units for the program provider's registered nurse to perform a comprehensive nursing assessment.

The commenter also expressed concerns about proposed §263.104(k)(10)(A)(ii) that adds employment readiness to the list of HCS Program services that require a service coordinator to inform the applicant or legally authorized representative that if enough registered nursing units for a comprehensive nursing assessment are not included in the initial IPC, that the applicant may not be able to receive the service. The commenter stated these requirements reinforce the Medical Model view of disability that perpetuates the view that a person with IDD needs treatment and is not capable of completing job tasks.

RESPONSE: HHSC declines to make a change in response to this comment. The requirements in proposed §263.104(k)(9) and (10)(A)(ii) ensure an individual who receives certain HCS Program services has a sufficient amount of registered nursing services for a registered nurse to perform a comprehensive nursing assessment to ensure the individual's health, safety, and welfare in the provision of the service.

COMMENT: One commenter expressed concern that employment readiness does not reflect evidence-based practices for employment services. The commenter also expressed concern that proposed §263.301(c)(15) requires authorization of employment readiness to be supported by an HHSC Employment First Discovery Tool and suggested that the HHSC Employment First Discovery Tool should only be applicable in integrated settings.

RESPONSE: HHSC declines to make a change in response to this comment. HHSC requires authorization of employment readiness to be supported by the HHSC Employment First Discovery Tool because the tool assesses the individual's employment goals and can assist the service planning team in identifying the most appropriate employment service to help the individual meet those goals.

COMMENT: Several commenters recommended HHSC revise proposed §263.304 to add a five-year lifetime limit to employment readiness that may only be extended after an individual attempts competitive integrated employment. The commenters emphasized the goal should be competitive integrated employment.

RESPONSE: HHSC declines to make a change in response to these comments because a lifetime limit is not person-centered and may limit opportunities for competitive integrated employment for individuals who need more support beyond the proposed five years to prepare for employment. In addition, the annual review of service plans ensures services on an individual's plan are the most appropriate to meet the individual's current needs.

COMMENT: One commenter requested HHSC allow more flexibility in how employment readiness is provided by changing the weekly service limit in proposed §263.304(a)(7) from five days per calendar week to 30 hours per calendar week to allow the service to be provided six days a week in a community setting.

RESPONSE: HHSC declines to make changes in response to this comment because pursuant to Title 26 Texas Administrative Code (TAC) §565.5(b)(42), an individual must have the right to "have opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and routines of other members of the community."

COMMENT: One commenter requested that HHSC improve individualized skills and socialization and expand it to incorporate employment assistance and supported employment rather than

add the requirement in proposed §263.304(a)(7) that establishes a combined service limit for employment readiness and individualized skills and socialization.

RESPONSE: HHSC declines to make a change in response to this comment because it is outside the scope of this rule project. A change to the scope of individualized skills and socialization would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter expressed concerns that the requirements in proposed §263.501(d)(1) and (2), to ensure that a group setting allows an individual to control the individual's own schedule and activities, have access to the individual's food at any time, receive visitors of the individual's choosing at any time and be physically accessible and free of hazards, are more appropriate for residential settings and irrelevant to employment readiness settings.

RESPONSE: HHSC declines to make changes in response to this comment because the requirements in proposed §263.501(d)(1) and (2) were added to comply with federal HCBS settings requirements for services provided in a group setting.

COMMENT: One commenter stated vocational services do not cover group activities. The commenter also stated that vocational rehabilitation counselors may consider employment readiness as a day program service that diminishes skills necessary for competitive, integrated employment.

RESPONSE: HHSC declines to make changes in response to this comment because vocational rehabilitation services are outside the scope of this project.

COMMENT: One commenter stated that employment assistance and supported employment are underutilized and using these services would eliminate the need for the requirement in proposed §263.901(e)(21), which requires a service coordinator to update an individual's person-directed plan if a modification to a service delivered in a group setting is needed.

RESPONSE: HHSC declines to make changes in response to this comment because the implementation of employment readiness is necessary for compliance with Texas Human Resources Code §32.0755, added by H.B. 4169, 88th Legislature, Regular Session, 2023.

COMMENT: One commenter opposed the implementation of employment readiness, stating it is not a needed service and it is similar to day habilitation. The commenter expressed that employment assistance and supported employment services are existing services that prepare an individual for paid employment in the community.

RESPONSE: HHSC declines to make changes in response to this comment because the implementation of employment readiness is necessary for compliance with Texas Human Resources Code §32.0755, added by H.B. 4169, 88th Legislature, Regular Session, 2023.

COMMENT: One commenter recommended HHSC invest in the development of individualized skills and socialization, employment assistance, and supported employment services to ensure every person has access to integrated, community-based activities and employment. The review of these services should cover the service rates, flexibility in the delivery of services, training, and transition support from Texas Workforce Commission - Vocational Rehabilitation Program services, transportation, long-term counselling for employment success, ongoing service

provider training and development of expertise in employment issues at the state level.

RESPONSE: HHSC did not make changes in response to these comments because it is outside the scope of this rule project.

COMMENT: One commenter expressed concern that the proposed rules do not include detailed information about employment readiness including performance standards, service standards, and requirements for program providers.

RESPONSE: HHSC declines to make changes in response to this comment. Service delivery requirements that include detailed service description are in the certification standards that are outside the scope of this rule project. In addition, the HCS Billing Requirements, which are not within the scope of this project, will provide detailed information about the service including detailed description, billable and non-billable activities, qualified service providers, and documentation requirements.

COMMENT: Several commenters requested that HHSC add a requirement that allows individuals who are competitively employed to receive employment readiness for professional development.

RESPONSE: HHSC declines to make changes in response to this comment. Employment assistance, an HCS Program service described in §263.5(a)(24), can be used to gain additional employment skills. Furthermore, proposed §263.5(a)(26) describes employment readiness as assistance that prepares an individual to participate in employment.

COMMENT: Three commenters requested that HHSC include professional and vocational skills development experience in the service provider requirements for employment readiness.

RESPONSE: HHSC declines to make changes in response to this comment because it is outside the scope of this rule project. Service provider requirements are in the certification standards and the HCS Billing Requirements, which are not part of this project.

COMMENT: One commenter requested that HHSC allow "enclave settings," i.e., settings that allow the exclusive employment of individuals with intellectual and developmental disabilities to complete contract work as part of their employment readiness service.

RESPONSE: HHSC declines to make changes in response to this comment because "enclave setting" is outside the scope of this project. Based on the interpretation of technical guidance from CMS, HHSC considers enclave settings, also known as small group employment, to be a distinct service from employment readiness, because of the differences in focus, structure, and goals.

HHSC made changes to the rules that are not in response to comments.

HHSC made a minor editorial change in proposed §263.3(56) for consistency in the waiver program rules in the spelling of "job-task oriented."

HHSC updated references to the Texas Government Code citations in proposed §263.3(61) and (75) to implement H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

HHSC updated references in §263.3, §263.5, §263.104, §263.601, and §263.901 to all rules administratively transferred from Title 40 TAC to Title 26 TAC.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §263.3, §263.5

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing pre-occupational or similar services to persons in a Medicaid waiver program.

#### §263.3. Definitions.

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

- (1) Abuse--
  - (A) physical abuse;
  - (B) sexual abuse; or
  - (C) verbal or emotional abuse.
- (2) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:
  - (A) interactions with the applicant or individual;
  - (B) availability to the applicant or individual for assistance or support when needed; and
  - (C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.
- (3) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- (4) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.
- (5) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code Chapter 247, Assisted Living Facilities.
- (6) Applicant--A Texas resident seeking services in the Home and Community-Based Services Program.
- (7) Audio-only--An interactive, two-way audio communication platform that only uses sound.
- (8) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

- (9) Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (10) Calendar day--Any day, including weekends and holidays.
- (11) CDS option--Consumer directed services option. A service delivery option as defined in §264.103 of this title (relating to Definitions).
- (12) CFC--Community First Choice.
- (13) CFC ERS--CFC emergency response services.
- (14) CFC FMS--The term used for financial management services on the individual plan of care (IPC) of an applicant or individual if the applicant will receive or the individual receives only CFC personal assistance services (PAS)/habilitation (HAB) through the CDS option.
- (15) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant will receive or the individual receives only CFC PAS/HAB through the CDS option.
- (16) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.
- (17) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.
- (18) Comprehensive nursing assessment--A comprehensive physical and behavioral assessment of an individual, including the individual's health history, current health status, and current health needs, that is completed by a registered nurse (RN).
- (19) Contract--A provisional contract or a standard contract.
- (20) CRCG--Community resource coordination group. A local interagency group, composed of public and private agencies, that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Texas Health and Human Services Commission (HHSC) website.
- (21) Delegated nursing task--A nursing task delegated by an RN to an unlicensed person in accordance with:
- (A) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and
- (B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
- (22) Designated Representative--This term has the meaning set forth in §264.103 of this title.
- (23) DFPS--The Department of Family and Protective Services.
- (24) DID--Determination of intellectual disability. This term has the meaning set forth in §304.102 of this title (relating to Definitions).
- (25) DID report--Determination of intellectual disability report. This term has the meaning set forth in §304.102 of this title.
- (26) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in a risk to the health and safety of an individual or another person.
- (27) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the legally authorized representative (LAR) should be informed, such as an individual:
- (A) needing emergency medical care;
- (B) being removed from the individual's residence by law enforcement;
- (C) leaving the individual's residence without notifying a staff member or service provider and not being located; and
- (D) being moved from the individual's residence to protect the individual (for example, because of a hurricane, fire, or flood).
- (28) EVV--Electronic visit verification. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).
- (29) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.
- (30) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.
- (31) FMS--Financial management services.
- (32) FMSA--Financial management services agency. As defined in §264.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.
- (33) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:
- (A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and
- (B) who was killed in action or died while in service, or whose active duty otherwise ended.
- (34) Four-person residence--A residence:
- (A) that a program provider leases or owns;
- (B) in which at least one person but no more than four persons receive:
- (i) residential support;
- (ii) supervised living;
- (iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or
- (iv) respite;
- (C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a setting described in §263.501(b) of this chapter (relating to Requirements for Home and Community-Based Service Settings).

(35) GRO--General residential operation. This term has the meaning set forth in Texas Human Resources Code §42.002.

(36) Group setting--A setting, other than an individual's residence, in which more than one individual or other person receives employment readiness, employment assistance, supported employment, or a similar service.

(37) HCS--Home and Community-based Services. Services provided through the HCS Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(38) Health maintenance activities--This term has the meaning set forth in 22 TAC §225.4 (relating to Definitions).

(39) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by a licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. This includes tasks delegated by an RN; health maintenance activities, that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(40) HHSC--The Texas Health and Human Services Commission.

(41) Hospital--A public or private institution licensed or exempt from licensure in accordance with Texas Health and Safety Code (THSC) Chapters 13, 241, 261, or 552.

(42) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(43) ICAP--Inventory for Client and Agency Planning. An instrument designed to assess a person's needs, skills, and abilities.

(44) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(45) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(46) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC for level of care determination and level of need assignment.

(47) Implementation plan--A written document developed by a program provider for an individual, for each HCS Program service, except supported home living, and for each CFC service, except CFC

support management, on the individual's IPC to be provided by the program provider. An implementation plan includes:

(A) a list of outcomes identified in the person-directed plan that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(48) In person or in-person--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

(49) Individual--A person enrolled in the HCS Program.

(50) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(51) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(52) Intellectual disability--This term has the meaning set forth in §304.102 of this title.

(53) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(54) IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(55) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.



(C) A revised IPC does not change the begin or end date of an IPC year.

(56) Job-task oriented--Focused on developing a skill related to a specific type of employment.

(57) LAR--Legally authorized representative. A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(58) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(59) LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(60) LON--Level of need. An assignment given by HHSC to an individual upon which reimbursement for host home/companion care, supervised living, residential support, in-home day habilitation, and day habilitation is based.

(61) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001.

(62) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(63) Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(64) Mental health facility--A facility licensed in accordance with THSC Chapter 577, Private Mental Hospitals and Other Mental Health Facilities.

(65) Military family member--A person who is the spouse or child (regardless of age) of:

- (A) a military member; or
- (B) a former military member.

(66) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(67) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who voluntarily assist an individual to achieve the individual's identified goals.

(68) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(69) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(70) PDP--Person-directed plan. A plan developed with an applicant or individual and LAR using an HHSC form that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety; and

(B) includes the setting for each service, which must be selected by the individual or LAR from setting options.

(71) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC §533A.035.

(72) Permanency planner--A person who:

(A) develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form; and

(B) performs other permanency planning activities for an applicant or individual under 22 years of age.

(73) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(74) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(75) Platform--This term has the meaning set forth in Texas Government Code §521.0001.

(76) Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook.

(77) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the HCS Program Billing Requirements to determine the need for pre-enrollment minor home modifications.

(78) Pre-move site review--A review conducted by the service coordinator in accordance with HHSC's IDD PASRR Handbook.

(79) Professional therapies--Services that consist of the following:

- (A) audiology;
- (B) occupational therapy;
- (C) physical therapy;
- (D) speech and language pathology;
- (E) behavioral support;
- (F) cognitive rehabilitation therapy;
- (G) dietary services; and

(H) social work.

(80) Program provider--A person, as defined in §52.3 of this title (relating to Definitions), that has a contract with HHSC to provide HCS Program services, excluding an FMSA.

(81) Provisional contract--A contract that HHSC enters into with a program provider in accordance with §52.39 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 §52.39(e) of this title.

(82) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(83) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the HCS Program Billing Requirements.

(84) Renewal IPC--An IPC developed for an individual in accordance with §263.302(a) of this chapter (relating to Renewal and Revision of an IPC).

(85) Residential child care facility--This term has the meaning set forth in Texas Human Resources Code §42.002.

(86) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §263.302(b) or (d) of this chapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(87) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(88) Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(89) Service coordination--A service as defined in §331.5 of this title (relating to Definitions).

(90) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(91) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraph (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, a teacher, or if applicable, the permanency planner;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) the service coordinator;

(iii) if the applicant is at least 21 years of age but younger than 22 years of age, the permanency planner;

(iv) a staff member of the program provider;

(v) providers of specialized services;

(vi) a nursing facility staff person who is familiar with the applicant's needs;

(vii) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(viii) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or ICF/IID or has enrolled in the HCS Program as a diversion from admission to an institution, including a nursing facility or ICF/IID, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) the service coordinator;

(iii) if the individual is at least 21 years of age but younger than 22 years of age and resides in a three-person residence or four-person residence, the permanency planner;

(iv) a staff member of the program provider;

(v) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(vi) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(92) Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(93) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person,

unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(94) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(95) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(96) Specialized services--This term has the meaning set forth in §303.102 of this title (relating to Definitions).

(97) Staff member--An employee or contractor of an HCS program provider.

(98) Standard contract--A contract that HHSC enters into with a program provider in accordance with §52.41 of this title (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §52.41(d) of this title.

(99) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(100) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(101) Supported Decision-Making Agreement--This term has the meaning set forth in Texas Estates Code §1357.002(4).

(102) Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(103) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(104) TANF--Temporary Assistance for Needy Families.

(105) TAS--Transition assistance services.

(106) Telehealth service--This term has the meaning set forth in Texas Occupations Code §111.001.

(107) Temporary admission--A stay in a facility listed in §263.705(a) of this chapter (relating to Suspension of HCS Program Services and CFC Services) for 270 calendar days or less or, if an extension is granted in accordance with §263.705(h) of this chapter, a stay in such a facility for more than 270 calendar days.

(108) Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a setting described in §263.501(b) of this chapter.

(109) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(110) Transfer IPC--An IPC that is developed in accordance with §263.701 of this chapter (relating to Process for Individual to Transfer to a Different Program Provider or FMSA) and §263.702 of this chapter (relating to Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider) when an individual transfers to another program provider or chooses a different service delivery option.

(111) Transition plan--A written plan developed in accordance with §303.701 of this title (relating to Transition Planning for a Designated Resident) for an applicant residing in a nursing facility who is enrolling in the HCS Program.

(112) Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using the HHSC Individual Transportation Plan form available on the HHSC website. A transportation plan is used to document how supported home living will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(113) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(114) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(115) Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(116) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

§263.5. *Description of HCS Program Services.*

(a) HCS Program services are described in this section and in Appendix C of the HCS Program waiver application approved by CMS and available on the HHSC website.

(1) Adaptive aids are devices, controls, or items that are necessary to address specific needs identified in an individual's service plan. Adaptive aids enable an individual to maintain or increase the ability to perform ADLs or the ability to perceive, control, or communicate with the environment in which the individual lives.

(2) Audiology is the provision of audiology as defined in the Texas Occupations Code Chapter 401.

(3) Speech and language pathology is the provision of speech-language pathology as defined in the Texas Occupations Code Chapter 401.

(4) Occupational therapy is the provision of occupational therapy as described in the Texas Occupations Code Chapter 454.

(5) Physical therapy is the provision of physical therapy as defined in the Texas Occupations Code Chapter 453.

(6) Dietary services are the provision of nutrition services as defined in the Texas Occupations Code Chapter 701.

(7) Behavioral support is the provision of specialized interventions that:

(A) assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life; and

(B) improve an individual's quality of life.

(8) Social work is the provision of social work as defined in Texas Occupations Code Chapter 505.

(9) Cognitive rehabilitation therapy is assistance to an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells/chemistry in order to enable the individual to compensate for the lost cognitive functions, including reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(10) Day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual. Day habilitation does not include in-home day habilitation.

(11) In-home day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in an individual's residence.

(12) Dental treatment is:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(13) Minor home modifications are physical adaptations to an individual's home to address specific needs identified by an individual's service planning team and include pre-enrollment minor home modifications which are modifications completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(14) Licensed vocational nursing is the provision of licensed vocational nursing as defined in the Texas Occupations Code Chapter 301.

(15) Registered nursing is the provision of professional nursing as defined in the Texas Occupations Code Chapter 301.

(16) Specialized registered nursing is the provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(17) Specialized licensed vocational nursing is the provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(18) Supported home living is transportation of an individual with a residential type of "own/family home."

(19) Host home/companion care is residential assistance provided in a residence that is owned or leased by the service provider of host home/companion care or the individual and is not owned or leased by the program provider. The service provider of host home/companion care must live in the same residence as the individual receiving the service.

(20) Supervised living is residential assistance provided in a three-person residence or four-person residence in which service providers are present in the residence and are able to respond to the needs of individuals during normal sleeping hours.

(21) Residential support is residential assistance provided in a three-person residence or four-person residence in which service providers are present and awake in the residence whenever an individual is present in the residence.

(22) Respite is temporary relief for an unpaid caregiver in a location other than the individual's home for an individual who has a residential type of "own/family home."

(23) In-home respite is temporary relief for an unpaid caregiver in the individual's home for an individual who has a residential type of "own/family home."

(24) Employment assistance is assistance to help an individual locate paid employment in the community.

(25) Supported employment is assistance, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(26) Employment readiness is assistance that prepares an individual to participate in employment. Employment readiness services are not job-task oriented.

(27) TAS is assistance to an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program and consists of:

(A) for an applicant whose initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(b) The services described in this subsection are for an individual who is receiving at least one HCS Program service through the CDS option.

(1) FMS is a service defined in §264.103 of this title (relating to Definitions).

(2) Support consultation is a service defined in §264.103 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 4, 2024.

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Health and Human Services Commission

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



## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

### 26 TAC §263.104

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

#### §263.104. *Process for Enrollment of Applicants.*

(a) HHSC notifies a LIDDA, in writing, when the opportunity for enrollment in the HCS Program becomes available in the LIDDA's local service area and directs the LIDDA to offer enrollment to an applicant:

(1) whose interest list date, assigned in accordance with §263.103 of this subchapter (relating to HCS Interest List), is earliest on the statewide interest list for the HCS Program maintained by HHSC; or

(2) who is a member of a target group identified in the HCS Program waiver application approved by CMS.

(b) Except as provided in subsection (c) of this section, a LIDDA must offer enrollment in the HCS Program in writing and deliver it to the applicant or LAR by United States mail or by hand delivery.

(c) A LIDDA must offer enrollment in the HCS Program to an applicant described in subsection (a)(2) of this section in accordance with HHSC's procedures.

(d) A LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of enrollment in the HCS Program within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the HCS Program, the LIDDA terminates those services funded by general revenue that are similar to services provided in the HCS Program; and

(2) the HHSC Deadline Notification form, which is available on the HHSC website.

(e) If an applicant or LAR responds to an offer of enrollment in the HCS Program, a LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member if possible, both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program, both state supported living centers and community-based facilities, waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports, using the HHSC Explanation of Services and Supports document, which is available on the HHSC website;

(2) provide the applicant and LAR both an oral and a written explanation of all HCS Program services and CFC services using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website; and

(3) give the applicant or LAR the HHSC Waiver Program Verification of Freedom of Choice form, which is available on the HHSC website, to document the applicant's choice between the HCS Program or the ICF/IID Program.

(f) A LIDDA must withdraw an offer of enrollment in the HCS Program made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of enrollment in the HCS Program;

(2) within seven calendar days after the applicant or LAR receives the HHSC Waiver Program Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not use the form to document the applicant's choice, the HCS Program or the ICF/IID Program;

(3) within 30 calendar days after the applicant or LAR receives the contact information for all program providers in the LIDDA's local service area in accordance with subsection (j)(3) of this section, the applicant or LAR does not document the choice of a program provider using the HHSC Documentation of Provider Choice form, which is available on the HHSC website;

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and HHSC has approved the withdrawal of the offer; or

(5) the applicant has moved out of the State of Texas.

(g) If a LIDDA withdraws an offer of enrollment in the HCS Program made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If an applicant is currently receiving services from a LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the HCS Program, the LIDDA must terminate those services funded by general revenue that are similar to services provided in the HCS Program.

(i) If a LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §301.155 of this title (relating to Notification and Appeals Process).

(j) If an applicant or LAR accepts the offer of enrollment in the HCS Program, the LIDDA must compile and maintain information necessary to process the applicant's request for enrollment.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIDDA must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA must complete an ID/RC Assessment in accordance with §263.105 of this subchapter (relating to LOC Determination) and §263.106 of this subchapter (relating to LON Assignment).

(A) The LIDDA must:

(i) do one of the following:

(I) conduct a DID in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability) except that the following activities must be conducted in person:

(-a-) a standardized measure of the individual's intellectual functioning using an appropriate test based on the characteristics of the individual; and

(-b-) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's adaptive behavior level; or

(II) review and endorse a DID report in accordance with §304.403 of this title (relating to Review and Endorsement of a Determination of Intellectual Disability Report); and

(ii) determine whether the applicant has been diagnosed by a licensed physician as having a related condition.

(B) The LIDDA must:

(i) conduct an ICAP assessment in person; and

(ii) recommend an LON assignment to HHSC in accordance with §263.106 of this subchapter.

(C) The LIDDA must enter the information from the completed ID/RC Assessment and electronically submit the information to HHSC for approval in accordance with §263.105(a) of this subchapter and §263.106(a) of this subchapter and, if applicable, submit supporting documentation as required by §263.107(c) of this subchapter (relating to HHSC Review of LON).

(3) The LIDDA must provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area.

(4) The LIDDA must assign a service coordinator who, together with other members of the applicant's service planning team, must:

(A) develop a PDP;

(B) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form, which is available on the HHSC website, to determine the number of CFC PAS/HAB hours the applicant needs; and

(C) develop an initial IPC in accordance with §263.301(c) of this chapter (relating to IPC Requirements).

(5) The CFC PAS/HAB Assessment form required by paragraph (4)(B) of this subsection must be completed in person with the individual unless the following conditions are met in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(6) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §263.401(a) and (b) of this chapter (relating to CDS Option).

(k) A service coordinator must:

(1) arrange for meetings and visits with potential program providers as requested by an applicant or LAR;

(2) review the initial IPC with potential program providers as requested by the applicant or LAR;

(3) ensure that the applicant's or LAR's choice of a program provider is documented on the HHSC Documentation of Provider Choice form and that the form is signed by the applicant or LAR;

(4) negotiate and finalize the initial IPC and the date services will begin with the selected program provider, consulting with HHSC if necessary to reach agreement with the selected program provider on the content of the initial IPC and the date services will begin;

(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO; and

(B) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, the HHSC Transition Assistance Services

(TAS) Assessment and Authorization form, which is available on the HHSC website, in accordance with the form's instructions, which includes:

- (i) identifying the TAS the applicant needs; and
  - (ii) estimating the monetary amount for each transition assistance service identified, which must be within the service limit described in §263.304(a)(6) of this chapter (relating to Service Limits);
- (B) submit the completed form to HHSC to determine if TAS is authorized;
- (C) send the form authorized by HHSC to the selected program provider; and
- (D) include the TAS and the monetary amount authorized by HHSC on the applicant's initial IPC;
- (7) determine whether an applicant meets the following criteria:
- (A) is being discharged from a nursing facility, an ICF/IID, or a GRO;
  - (B) has not met the maximum service limit for minor home modifications as described in §263.304(a)(3)(A) of this chapter; and
  - (C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;
- (8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:
- (A) complete, with the applicant or LAR and selected program provider, the HHSC Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form, which is available on the HHSC website, in accordance with the form's instructions, which includes:
    - (i) identifying the pre-enrollment minor home modifications the applicant needs;
    - (ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider; and
    - (iii) based on documentation provided by the program provider as required by the *HCS Program Billing Requirements*, stating the cost of:
      - (I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §263.304(a)(3)(A) of this chapter; and
      - (II) the pre-enrollment minor home modifications assessments conducted;
  - (B) submit the completed form to HHSC to determine if pre-enrollment minor home modification and pre-enrollment minor home modifications assessments are authorized;
  - (C) send the form authorized by HHSC to the selected program provider; and
  - (D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by HHSC on the applicant's initial IPC;
- (9) if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance,

supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB, ensure that the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment unless:

- (A) nursing services are not on the IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on the HHSC Nursing Task Screening Tool form; or
  - (B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician;
- (10) if an applicant or LAR refuses to include on the initial IPC a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment as required by paragraph (9) of this subsection:
- (A) inform the applicant or LAR that the refusal:
    - (i) will result in the applicant not receiving nursing services from the program provider; and
    - (ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB from the program provider, will result in the individual not receiving that service unless:
      - (I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and
      - (II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and
  - (B) document the refusal of the RN nursing units on the initial IPC for a comprehensive nursing assessment by the program provider's RN in the applicant's record;
- (11) ensure that the applicant or LAR signs and dates the initial IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;
- (12) ensure that the selected program provider signs and dates the initial IPC, demonstrating agreement that the services will be provided to the applicant;
- (13) sign and date the initial IPC, which indicates that the service coordinator agrees that the requirements described in §263.301(c) of this chapter have been met;
- (14) using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website, provide an oral and written explanation to the applicant or LAR:
- (A) of the eligibility requirements for HCS Program services as described in §263.101(a) of this subchapter (relating to Eligibility Criteria for HCS Program Services and CFC Services);
  - (B) if the applicant's PDP includes CFC services:
    - (i) of the eligibility requirements for CFC services as described in §263.101(c) of this subchapter to applicants who do not receive MAO Medicaid; and
    - (ii) of the eligibility requirements for CFC services as described in §263.101(d) of this subchapter to applicants who receive MAO Medicaid;

(C) that HCS Program services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §263.101(a) of this subchapter; or

(ii) the individual or LAR requests termination of HCS Program services; and

(D) if the applicant's PDP includes CFC services, that CFC services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §263.101(c) or (d) of this subchapter; or

(ii) the individual or LAR requests termination of CFC services.

(l) A LIDDA must conduct permanency planning in accordance with §263.902(a) - (f) of this chapter (relating to Permanency Planning).

(m) After an initial IPC is finalized and signed in accordance with subsection (k) of this section, the LIDDA must:

(1) enter the information from the initial IPC in the HHSC data system and electronically submit it to HHSC;

(2) keep the original initial IPC in the individual's record;

(3) ensure the information from the initial IPC entered in the HHSC data system and electronically submitted to HHSC contains information identical to the information on the initial IPC; and

(4) submit other required enrollment information to HHSC.

(n) HHSC notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. When the enrollment is approved, HHSC authorizes the applicant's enrollment in the HCS Program through the HHSC data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) Before the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable:

(1) copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations;

(2) the completed ID/RC Assessment;

(3) the initial IPC;

(4) the applicant's PDP; and

(5) if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(p) Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, the selected program provider must not initiate services until notified of HHSC's approval of the applicant's enrollment.

(q) The selected program provider and the individual or LAR must develop:

(1) an implementation plan for:

(A) HCS Program services, except for supported home living, that is based on the individual's PDP and IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if supported home living is included on the PDP.

(r) A LIDDA must retain in an applicant's record:

(1) the HHSC Waiver Program Verification of Freedom of Choice form;

(2) the HHSC Documentation of Provider Choice form, if applicable;

(3) the HHSC Deadline Notification form; and

(4) any other correspondence related to the offer of enrollment in the HCS Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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



## SUBCHAPTER D. DEVELOPMENT AND REVIEW OF AN IPC

### 26 TAC §263.301, §263.304

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing pre-occupational or similar services to persons in a Medicaid waiver program.

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SUBCHAPTER F. REQUIREMENTS FOR  
SERVICE SETTINGS AND PROGRAM  
PROVIDER OWNED OR CONTROLLED  
RESIDENTIAL SETTINGS

**26 TAC §263.501**

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

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SUBCHAPTER G. REIMBURSEMENT BY  
HHSC

**26 TAC §263.601**

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

*§263.601. Program Provider Reimbursement.*

The following requirements apply to program provider reimbursement.

(1) HHSC pays a program provider as described in this paragraph.

(A) HHSC pays for supported home living, professional therapies, nursing, respite, in-home respite, employment assistance, supported employment, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) HHSC pays for host home/companion care, residential support, supervised living, employment readiness, in-home day habilitation and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) HHSC pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the HCS Program Billing Requirements available on the HHSC website.

(D) HHSC pays:

(i) for TAS based on a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC and the actual cost of the TAS as evidenced by purchase receipts required by the HCS Program Billing Requirements; and

(ii) if requested, a TAS service fee in accordance with the HCS Program Billing Requirements.

(E) HHSC pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, as evidenced by documentation required by the HCS Program Billing Requirements.

(F) Subject to the requirements in the HCS Program Billing Requirements, HHSC pays for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(G) HHSC pays for CFC ERS based on the actual cost of the service, not to exceed the reimbursement rate ceiling for CFC ERS.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in §52.121 of this title (relating to Claims Payment) and the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers.

(3) If an individual's HCS Program services or CFC services are suspended or terminated a program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

(A) in-home day habilitation;

(B) day habilitation;

(C) supported home living;

(D) in-home respite;

(E) respite;

(F) employment assistance;

(G) supported employment;

(H) employment readiness;

(I) professional therapies;

(J) nursing; and

(K) CFC PAS/HAB.

(4) If a program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by HHSC in the HCS Program Billing Requirements and other documentation as required by the HCS Program Billing Requirements.

(5) HHSC does not pay a program provider for:

(A) a service or recoups any payments made to the program provider for a service if:

(i) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service was, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(ii) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment:

(I) the service was provided to an individual during a period of time for which there was not a signed, dated, and authorized IPC for the individual;

(II) the service was provided during a period of time for which there was not a signed and dated ID/RC Assessment for the individual;

(III) the service was provided during a period of time for which the individual did not have an LOC determination;

(IV) the service was not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §263.301(c) of this chapter (relating to IPC Requirements);

(V) the service was not provided in accordance with the individual's PDP or implementation plan;

(VI) the service was provided before the individual's enrollment date into the HCS Program; or

(VII) the service was not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §263.302(d) of this chapter (relating to Renewal and Revision of an IPC);

(iii) the service was not provided in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(iv) the service was not documented in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(v) the program provider did not comply with §52.109 of this title (relating to Records);

(vi) the claim for the service was not prepared and submitted in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(vii) the claim for the service did not meet the requirements in §52.121 of this title (relating to Claims Payment) or the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(viii) the program provider does not have the documentation described in paragraph (3) of this section;

(ix) HHSC determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

(x) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(xi) the service was paid at an incorrect LON because the information entered in the HHSC data system from a completed ID/RC Assessment was not identical to the information on the completed ID/RC Assessment; or

(xii) the service was not provided;

(B) supervised living or residential support, if the program provider provided the supervised living or residential support service in a residence in which four individuals or other persons receiving similar services live without HHSC's approval as described in rules governing the HCS Program;

(C) employment assistance, if before including the employment assistance on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment assistance was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(D) supported employment, if before including the supported employment on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that supported employment was not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(E) employment readiness, if before including the employment readiness on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment readiness was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(F) host home/companion care, residential support, or supervised living, if the host home/companion care, residential support, or supervised living was provided on the day of the individual's suspension or termination of HCS Program services;

(G) TAS, if the TAS, was not provided in accordance with a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC;

(H) pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, if the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, was not provided in accordance with a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC;

(I) a CFC service, if the CFC service, was provided to an individual receiving host home/companion care, supervised living, or residential support;

(J) supported home living, if the supported home living, was not provided in accordance with a transportation plan and

§263.5(a)(18) of this chapter (relating to Description of HCS Program Services); or

(K) CFC PAS/HAB, in-home day habilitation provided to an individual with a residential type of "own/family home," or in-home respite, if the CFC PAS/HAB, in-home day habilitation, or in-home respite, did not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval).

(6) A program provider must refund to HHSC any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from HHSC, whichever is earlier.

(7) Except as provided in paragraph (8) of this section, if HHSC approves an LOC requested in accordance with §263.105(b)(3) of this chapter (relating to LOC Determination), HHSC pays a program provider for services provided to an individual for a period of not more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(8) If HHSC determines that a program provider submitted an ID/RC Assessment more than 180 calendar days after the expiration date of the previous ID/RC Assessment, because of circumstances beyond the program provider's control, HHSC may pay the program provider for a period of more than 180 calendar days after the date the individual's previous ID/RC Assessment expired.

(9) HHSC conducts provider fiscal compliance reviews to determine whether a program provider is in compliance with:

- (A) this chapter;
- (B) the HCS Program Billing Requirements;
- (C) the CFC Billing Requirements for HCS and TxHmL Program Providers;
- (D) Chapter 52, Subchapter C of this title (relating to Requirements of a Contractor); and
- (E) the program provider's Community Services Contract-Provider Agreement.

(10) HHSC conducts provider fiscal compliance reviews in accordance with the Provider Fiscal Compliance Review Protocol set forth in the HCS Program Billing Requirements and the CFC Billing Requirements for HCS and TxHmL Program Providers. As a result of a provider fiscal compliance review, HHSC may:

- (A) recoup payments from a program provider; and
- (B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with HHSC's instructions, a corrective action plan that improves the program provider's billing practices.

(11) A corrective action plan required by HHSC in accordance with paragraph (10)(B) of this section must:

- (A) include:
  - (i) the reason the corrective action plan is required;
  - (ii) the corrective action to be taken;
  - (iii) the person responsible for taking each corrective action; and
  - (iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to HHSC within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by HHSC before implementation.

(12) Within 30 calendar days after HHSC receives a corrective action plan, HHSC notifies the program provider if HHSC approves the corrective action plan or if the plan requires changes.

(13) If HHSC requires a program provider to develop and submit a corrective action plan in accordance with paragraph (10)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §263.802 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. HHSC notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(14) If a program provider does not submit a corrective action plan or complete a required corrective action within the time frames described in paragraph (11) of this section, HHSC may impose a vendor hold on payments due to the program provider until the program provider takes the corrective action.

(15) If a program provider does not submit a corrective action plan or complete a required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (14) of this section, HHSC may terminate the contract.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray  
Chief Counsel  
Health and Human Services Commission  
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For further information, please call: (512) 438-2910



## SUBCHAPTER J. LIDDA REQUIREMENTS

### 26 TAC §263.901

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Human Resources Code §32.0755(f), which provides that the Executive Commissioner shall adopt rules to establish performance standards for providers providing prevocational or similar services to persons in a Medicaid waiver program.

§263.901. *LIDDA Requirements for Providing Service Coordination in the HCS Program.*

(a) In addition to the requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), a LIDDA must:

(1) comply with:

(A) this chapter;

(B) Chapter 264 of this title (relating to Consumer Directed Services Option); and

(C) Chapter 301, Subchapter M of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(2) ensure that a rights protection officer required by §334.113 of this title (relating to Rights Protection Officer at a State MR Facility or MRA), who receives a copy of an HHSC initial intake report or a final investigative report from an FMSA in accordance with §264.702 of this title (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Service Provider) or §264.703 of this title (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Staff Person or a Controlling Person of an FMSA), gives a copy of the report to the individual's service coordinator.

(b) A LIDDA must ensure that a service coordinator is an employee of the LIDDA and meets the requirements of this subsection.

(1) A service coordinator must meet the minimum qualifications and LIDDA staff training requirements described in Chapter 331 of this title except as described in paragraph (2) of this subsection.

(2) Notwithstanding §331.19(b)(2)(B) of this title (relating to Staff Person Training), a service coordinator must complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension of the six month timeframe is granted by HHSC.

(3) A service coordinator must receive training about the following within the first 90 calendar days after beginning service coordination duties:

(A) rules governing the HCS Program and CFC; and

(B) Chapter 264 of this title.

(c) A LIDDA must have a process for receiving and resolving complaints from a program provider related to the LIDDA's provision of service coordination or the LIDDA's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the LIDDA must ensure that the concern is communicated to the program provider and attempts are made to resolve the concern. The LIDDA may refer an unresolved concern to HHSC by calling the HHSC IDD Ombudsman toll-free telephone number at 1-800-252-8154.

(e) A service coordinator must:

(1) assist an individual, LAR, or actively involved person in exercising the legal rights of the individual;

(2) provide an individual, LAR, or family member with the booklet, *Your Rights In the Home and Community-based Services (HCS) Program*, available on the HHSC website, and the HHSC HCS Rights Addendum form, and an oral explanation of the rights in the booklet and the form:

(A) upon the individual's enrollment in the HCS Program;

(B) upon revision of the booklet or the form;

(C) upon request; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends;

(3) document the provision of the information required by paragraph (2) of this subsection, and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, upon enrollment of an individual and annually thereafter, the individual or LAR is informed orally and in writing of the following:

(A) the telephone number of the LIDDA to file a complaint;

(B) the toll-free telephone number of the HHSC IDD Ombudsman, 1-800-252-8154, to file a complaint; and

(C) the toll-free telephone number of DFPS, 1-800-647-7418, to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate the person-centered planning process to meet the goals and outcomes identified by an individual and LAR in the individual's PDP, including scheduling service planning team meetings;

(7) to meet the needs of an individual as those needs are identified, develop for the individual a full range of services and resources using:

(A) providers for services other than HCS Program services and CFC services; and

(B) advocates or other actively involved persons;

(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §263.104(j)(4)(A) of this chapter (relating to Process for Enrollment of Applicants);

(ii) §263.302 of this chapter (relating to Renewal and Revision of an IPC); and

(iii) §331.11 of this title (relating to LIDDA's Responsibilities); and

(B) document, for each HCS Program service, other than supervised living and residential support, and for each CFC service, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) ensure that the updated finalized PDP is signed by the individual or LAR;

(10) participate in the development, renewal, and revision of an individual's IPC in accordance with §263.104 and §263.302 of this chapter;

(11) ensure the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §263.302 of this chapter and ensure the service planning team completes other responsibilities and activities as described in this chapter;

(12) notify the service planning team if the service coordinator receives notification from the program provider that:

(A) an individual's behavior requires the implementation of a behavior support plan; or

(B) based on an annual review by the program provider, an individual's behavior support plan needs to continue;

(13) if a change to an individual's PDP is needed, other than as required by §263.302 of this chapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons;

(B) update the PDP as necessary; and

(C) within 10 calendar days after the PDP is updated, send a copy of the updated PDP to the program provider, the individual or LAR and, if applicable, the FMSA;

(14) provide an individual's program provider a copy of the individual's current PDP;

(15) monitor the provision of HCS Program services, CFC services, and non-HCS Program and non-CFC services to an individual;

(16) document whether an individual or LAR perceives that the individual is progressing toward desired outcomes identified on the individual's PDP;

(17) together with the program provider, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program and non-CFC services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from one of the following professionals:

(A) a psychologist licensed in accordance with Texas Occupations Code Chapter 501;

(B) a speech-language pathologist licensed in accordance with Texas Occupations Code Chapter 401; or

(C) an occupational therapist licensed in accordance with Texas Occupations Code Chapter 454;

(18) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(19) if individual does not have a guardian:

(A) ensure that the service planning team determines whether the individual would benefit from having a guardian or a less restrictive alternative to a guardian;

(B) if the service planning team determines that the individual would benefit from having a less restrictive alternative to a guardian such as a supported decision making agreement, take appropriate actions to implement such an alternative; and

(C) if the service planning team determines that the individual would benefit from having a guardian, make a referral to the appropriate court if:

(i) the individual would not benefit from a less restrictive alternative to a guardian; or

(ii) the individual would benefit from having a less restrictive alternative to a guardian but implementing such an alternative is not feasible;

(20) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service or a CFC service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(21) if notified by the program provider that a requirement described in §263.501(d)(1) of this chapter (relating to Requirements for Home and Community-Based Settings), §263.502(b)(1) - (7) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) or §263.503(c)(15) of this chapter (relating to Residential Agreements) needs to be modified, update the individual's PDP to include the following:

(A) a description of the specific and individualized assessed need that justifies the modification;

(B) a description of the positive interventions and supports that were tried but did not work;

(C) a description of the less intrusive methods of meeting the need that were tried but did not work;

(D) a description of the condition that is directly proportionate to the specific assessed need;

(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;

(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(G) the individual's or LAR's signature evidencing informed consent to the modification; and

(H) the program provider's assurance that the modification will cause no harm to the individual;

(22) if notified by the program provider that an individual or LAR has refused a comprehensive nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual's not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, employment readiness, in-home day habilitation, day habilitation, or CFC PAS/HAB, if the individual needs

one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(23) if the service coordinator determines that HCS Program services or CFC services provided for an individual should be terminated, including for a reason described in §263.104(k)(14)(C) or (D) of this chapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated; and

(ii) the attempts by the service coordinator to resolve the situation;

(B) send a written recommendation to terminate the individual's HCS Program services or CFC services to HHSC and include the documentation required by subparagraph (A) of this paragraph; and

(C) provide a copy of the written recommendation and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services or all CFC services, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services and CFC services; and

(iii) possible service resources upon termination, including CFC services through a managed care organization; and

(B) submit documentation to HHSC that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(26) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(27) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(28) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(29) unless contraindications are documented with justification by the service planning team, ensure that an individual who is 18 years or older has opportunities to participate in day activities of the individual's or LAR's choice that promote achievement of PDP outcomes;

(30) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(31) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(32) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(33) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR to assist the LIDDA in conducting permanency planning or if notified by the LIDDA that the LIDDA is unable to locate the parent or LAR in accordance with §263.902(g)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (35)(A) and (B) of this subsection; and

(B) notify HHSC, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that HHSC initiate a search for the parent or LAR;

(34) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (35)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (35)(B) of this subsection; and

(B) notify HHSC, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that HHSC initiate a search for the parent or LAR;

(35) request from and encourage the parent or LAR of an individual under 22 years of age requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom HHSC or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(36) within three business days after an individual under 22 years of age begins receiving supervised living or residential support:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see the HHSC website for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the individual's residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the individual's residence is located, if the individual is under three years of age (see the HHSC website to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's sex;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information;

(37) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person, by videoconferencing, or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is at least 18 years of age and under 22 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record;

(38) in accordance with Chapter 303, Subchapter G of this title (relating to Transition Planning) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility or as a diversion from admission to a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility;

(39) do the following to inform applicants and individuals about responsibilities related to EVV:

(A) for an applicant who will receive a service that requires the use of EVV from the program provider or through the CDS option:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the applicant or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i) - (iii) of this subparagraph before the individual's enrollment; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(B) for an individual who will receive a service that requires the use of EVV from the program provider or who is transferring to another program provider or LIDDA and will receive a service that requires the use of EVV from the program provider or through the CDS option:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i)-(iii) of this subparagraph on or before the effective date of the IPC that includes the EVV required service or the effective date of the transfer to another program provider or LIDDA; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record; and

(C) for an individual who will receive a service that requires the use of EVV through the CDS option or who will transfer to another FMSA and is receiving a service requiring the use of EVV:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i)-(iii) of this subparagraph before the individual receiving the EVV required service through the CDS option or on or before the effective date of the transfer to another FMSA; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(40) have contact with an individual in-person, by video-conferencing, or telephone to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service unless:

(A) the individual's HCS Program services have been suspended; or

(B) the service coordinator had an in-person contact with the individual that month to comply with §331.11(d) of this title (relating to LIDDA's Responsibilities);

(41) within one business day after the meeting to revise an IPC described in §263.503(k) of this chapter (relating to Residential Agreements), submit the following documentation to HHSC if the individual or LAR wants to keep residential support, supervised living, or host home/companion care on the individual's IPC:

(A) a completed HHSC Notification of Service Coordinator Disagreement form;

(B) a copy of the written notice of proposed eviction described in §263.503(h)(3) of this chapter;

(C) a copy of the written notice to vacate described in §263.503(j)(3) of this chapter;

(D) progress notes from any meetings related to the eviction; and

(E) a copy of the individual's PDP; and

(42) within one business day after receiving the notice from a program provider described in §263.503(m) of this chapter, notify HHSC that the individual is no longer delinquent in room or board payments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 4, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER RR. VALUATION MANUAL

###### 28 TAC §3.9901

The commissioner of the Texas Department of Insurance (TDI) adopts amended 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendment is adopted without changes to the proposed text published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7836) and will not be republished.

**REASONED JUSTIFICATION.** An amendment is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC).

Under Insurance Code §425.073, the commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of



the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016. On August 15, 2024, the NAIC voted to adopt changes to the valuation manual. Fifty jurisdictions, representing jurisdictions totaling 97.81% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC valuation manual meets the requirements of Insurance Code §425.073(c).

In addition to clarifying existing provisions, the 2025 valuation manual includes changes that:

- require qualified actuaries for principle-based reserving to meet the American Academy of Actuaries' Specific Qualification Standard with respect to their opining areas;
- for credit disability, remove the 12% increase to claim incidence rates for credit disability, based on more recent experience;
- authorize the valuation rate for non-jumbo contracts (contracts of less than \$250 million) to be determined daily rather than quarterly;
- allow for the valuation rate for funding agreements to be determined monthly rather than annually;
- add explicit requirements for international mortality to principle-based reserving for life products; and
- allow for variable annuity principle-based reserving prescribed assumption updates, as ongoing maintenance.

The NAIC's adopted changes to the valuation manual can be viewed at [https://content.naic.org/sites/default/files/pbr\\_data\\_valuation\\_manual\\_future\\_edition\\_red-line.pdf](https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_red-line.pdf).

Section 3.9901. The amendment to §3.9901 strikes the date on which the NAIC adopted its previous valuation manual and inserts the date on which the NAIC adopted its current valuation manual, adopting by reference the new valuation manual dated August 15, 2024. An additional change lowercases the word "commissioner," for consistency with current agency style preferences.

This adoption order includes provisions related to NAIC rules, regulations, directives, or standards, and, under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt it. In addition, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature. TDI has determined that neither Insurance Code §36.004 nor §36.007 prohibit the proposed rule because §425.073 requires the commissioner to adopt a manual that is substantially similar to the NAIC manual.

**SUMMARY OF COMMENTS.** TDI provided an opportunity for public comment on the rule proposal for a period that ended on October 28, 2024. TDI did not receive any comments on the proposed amendment.

**STATUTORY AUTHORITY.** The commissioner adopts amendments to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2024.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) adopts amendments to section rules in Title 40, Texas Administrative Code (TAC), Part 19, Chapter 700 Subchapters B, C, H, J, M, Q, and W and adopts new Subchapter E.

The Department of Family and Protective Services (DFPS) adopts new §§700.115, 700.501 - 700.510, 700.512, and 700.513 and amendments to §§700.211, 700.328, 700.332, 700.334, 700.844, 700.1039 and 700.1733 in Chapter 700 concerning Child Protective Services. DFPS adopts §§700.514 - 700.528, and 700.511 without changes to the proposed text published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8349). The edits to these rules do not change the nature or the scope of the rule nor does it create any new duties or power or affect new persons or entities, other than those already given notice. Rather the change more directly reflects what is already permitted under the rule but is corrected as it was an error in text. Accordingly, the rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The newly amended rules aim to implement the provisions of the General Appropriations Act, Senate Bill 1 Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26). The Department of Family and Protective Services (DFPS) with the assistance of HHSC, developed an alternative reimbursement methodology proposal for

the 87th Legislature for foster care and Community-based Care (CBC) rates.

The purpose of the adopted rule amendments is to implement the alternative reimbursement methodology, which will transform the foster care system to better align and support the success of CBC by establishing clearly defined foster care models/service packages with new corresponding foster care rates.

#### COMMENTS

The 30-day comment period ended November 11, 2024. During this period, DFPS received comments from Texas Alliance of Child and Family Services. A summary of the comments and DFPS's response follows:

Comment: Texas Alliance of Child and Family Services commented that throughout Chapter 700, Subchapter E, Division 2, the operation and direct care staff language regarding credentials was unclear. The language as written made it seem that an individual staff would have to be credentialed. Another concern was that throughout communications with DFPS regarding the implementation of T3C, DFPS has indicated that the add-on service in proposed rule §700.511 would be the CPA's expense, while the rule as proposed stated that "a portion of the funding" would be from CPAs.

Response: DFPS updated Chapter 700, Subchapter E, Division 2, to remove language regarding direct care staff having to be credentialed. In proposed rule §700.511, DFPS also removed reference to "portions of funding" so that it more accurately reflects that all of the funding is intended to reimburse Child Placing Agencies. Both edits reflect wording errors.

### SUBCHAPTER A. ADMINISTRATION

#### DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

##### 40 TAC §700.115

#### STATUTORY AUTHORITY

The adopted amended rule implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

TRD-202405790

Quyona Gregg

Senior Policy Attorney

Department of Family and Protective Services

Effective date: December 22, 2024

Proposal publication date: October 11, 2024

For further information, please call: (512) 929-6633

◆ ◆ ◆

### SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

#### DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

##### 40 TAC §700.211

The adopted amended rule implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

TRD-202405791

Quyona Gregg

Senior Policy Attorney

Department of Family and Protective Services

Effective date: December 22, 2024

Proposal publication date: October 11, 2024

For further information, please call: (512) 929-6633

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### SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

##### 40 TAC §§700.328, 700.332, 700.334

The adopted amended rules implement the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Quyona Gregg  
Senior Policy Attorney  
Department of Family and Protective Services  
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For further information, please call: (512) 929-6633



**SUBCHAPTER E. TEXAS CHILD-CENTERED  
CARE SYSTEM SERVICE PACKAGES  
DIVISION 1. BASIC FOSTER FAMILY HOME  
SUPPORT SERVICE PACKAGES**

**40 TAC §§700.501 - 700.512**

The adopted new rules implement the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

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Quyona Gregg  
Senior Policy Attorney  
Department of Family and Protective Services  
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For further information, please call: (512) 929-6633



**DIVISION 2. GENERAL RESIDENTIAL  
OPERATION TIER I AND TIER II SUPPORT  
SERVICE PACKAGES**

**40 TAC §§700.513 - 700.528**

The adopted new rules implement the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

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Quyona Gregg  
Senior Policy Attorney  
Department of Family and Protective Services  
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For further information, please call: (512) 929-6633



**SUBCHAPTER H. ADOPTION ASSISTANCE  
PROGRAM  
DIVISION 3. APPLICATION PROCESS,  
AGREEMENTS AND BENEFITS**

**40 TAC §700.844**

The adopted amended rule implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

TRD-202405795  
Quyona Gregg  
Senior Policy Attorney  
Department of Family and Protective Services  
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For further information, please call: (512) 929-6633



**SUBCHAPTER J. ASSISTANCE PROGRAMS  
FOR RELATIVES AND OTHER CAREGIVERS  
DIVISION 2. PERMANENCY CARE  
ASSISTANCE PROGRAM**

**40 TAC §700.1039**

The amended rule implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

TRD-202405796

Quyona Gregg

Senior Policy Attorney

Department of Family and Protective Services

Effective date: December 22, 2024

Proposal publication date: October 11, 2024

For further information, please call: (512) 929-6633



## SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

### DIVISION 2. POST-PERMANENCY SERVICES

**40 TAC §700.1733**

The adopted amendment implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2024.

TRD-202405797

Quyona Gregg

Senior Policy Attorney

Department of Family and Protective Services

Effective date: December 22, 2024

Proposal publication date: October 11, 2024

For further information, please call: (512) 929-6633



# REVIEW OF AGENCY RULES

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

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

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

## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 30, Administration, Subchapter A, State Board of Education: General Provisions, and Subchapter B, State Board of Education: Purchasing and Contracts, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting Chapter 30, Subchapters A and B, continue to exist.

The public comment period on the review begins December 20, 2024, and ends at 5:00 p.m. on January 21, 2025. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/state-board-of-education-rule-review>. The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in January 2025 in accordance with the SBOE board operating policies and procedures.

TRD-202405958

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: December 11, 2024



Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 30, Administration, Subchapter AA, Commissioner of Education: General Provisions, and Subchapter BB, Commissioner of Education: Purchasing and Contracts, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 30, Subchapters AA and BB, continue to exist.

The public comment period on the review begins December 20, 2024, and ends January 21, 2025. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202405959

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: December 11, 2024



Texas State Board of Pharmacy

### Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter G (§§291.120, 291.121, 291.123, 291.125, 291.127, 291.129, 291.131, 291.133), concerning Pharmacies (Services Provided by Pharmacies), pursuant to Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 28, 2025.

TRD-202405886

Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
Filed: December 4, 2024



The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter H (§§291.151, §291.153), concerning Pharmacies (Other Classes of Pharmacy), pursuant to Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 28, 2025.

TRD-202405887

Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
Filed: December 4, 2024



The Texas State Board of Pharmacy files this notice of intent to review Chapter 297, (§§297.1 - 297.11), concerning Pharmacy Techni-

cians and Pharmacy Technician Trainees, pursuant to Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 28, 2025.

TRD-202405888

Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
Filed: December 4, 2024



## Adopted Rule Reviews

Comptroller of Public Accounts

### Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 3, concerning Tax Administration, and Chapter 10, concerning Transparency. This review is being conducted in accordance with Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7935).

Relating to the review of Chapter 3, the comptroller finds that the reasons for adopting Subchapters K, X, Z BB, EE, FF, HH, KK, and LL continue to exist and readopts the sections without changes in accordance with the requirements of Government Code, §2001.039.

As a result of review of Chapter 3, the following subchapters are being amended: Subchapter A, §§3.1, 3.3, 3.7, 3.10, and 3.11; Subchapter B, §§3.17, 3.21, 3.23, 3.25, 3.27, 3.28, and 3.30; Subchapter C, §§3.35 and 3.37; Subchapter F, §§3.61, 3.64, 3.66, 3.68 - 3.75, 3.78 - 3.82, 3.84 - 3.95; Subchapter G, §3.101; Subchapter H, §3.121; Subchapter I, §3.143; Subchapter J, §3.151; Subchapter O, §§3.284, 3.286, 3.288 - 3.291, 3.293 - 3.296, 3.298 - 3.301, 3.306, 3.313 - 3.316, 3.318, 3.325, 3.330, 3.331, 3.333, 3.335, 3.336, 3.340 - 3.345, 3.355, 3.357, and 3.366; Subchapter S, §3.432; Subchapter T, §3.481; Subchapter U, §3.511; Subchapter V, §§ 3.574 - 3.584, 3.586 - 3.591, 3.593 - 3.599; Subchapter W, §§3.601 - 3.611; Subchapter AA, §3.701; Subchapter CC, §3.722; Subchapter DD, §3.731 and §3.732; Subchapter GG, §§3.809 - 3.822; 3.828, 3.830, 3.832, 3.834, 3.835; Subchapter JJ, §3.1203, and §3.1207; and Subchapter MM, §3.1271. The sections will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

As a result of the review of Chapter 3, the comptroller will propose the repeal of Subchapter A, §3.12; Subchapter B, §3.19; Subchapter E, §3.52; Subchapter F, §3.65; Subchapter O, §3.324 and §3.329; Subchapter GG, §3.831; and Subchapter NN, §3.1281.

Relating to the review of Chapter 10, the comptroller finds that the reasons for adopting this Chapter continue to exist and readopts the sections without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 3 and Chapter 10.

TRD-202405898

Jenny Burleson  
Director, Tax Policy  
Comptroller of Public Accounts  
Filed: December 6, 2024



Texas Juvenile Justice Department

### Title 37, Part 11

In accordance with §2001.039, Government Code, the Texas Juvenile Justice Department (TJJD) has completed its review of Title 37, Texas Administrative Code, Chapters 341, Juvenile Probation Department General Standards; 345, Juvenile Justice Professional Code of Ethics for Certified Officers; 349, General Administrative Standards; 350, Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents; and 358, Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents. TJJD published its Notice of Intent to Review these rules in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8751). TJJD received no public comments on the proposed rule review.

As a result of the review, TJJD finds the reasons for adopting Chapters 341, 345, 349, and 358 continue to exist but with amendments needed.

TJJD also finds the reasons for adopting Chapter 350 no longer exist and will repeal the chapter.

Amendments to Chapters 341, 345, 349, and 358 and the repeal of Chapter 350 will be proposed in a future issue of the *Texas Register*. This concludes TJJD's review of Texas Administrative Code, Chapters 341, 345, 349, 350, and 358.

TRD-202405931

Jana Jones  
General Counsel  
Texas Juvenile Justice Department  
Filed: December 10, 2024



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §34.1302(a)

Citation	Violation	Fine	Citation	Violation	Fine
	License and Registration		34.517(e)	Fixed system not installed or serviced by Type A or EPL	\$2,000.00
6001.152(a)	Branch office registration certificate required	\$1,000.00		Installation and Service	
6001.161(a)	Apprentice permit required	\$500.00	34.517(a)(1)	Portable extinguisher not installed/serviced/maintained IAW manufacturer's instructions	\$50.00-\$500.00
6001.251(a)(1)	No registration certificate (portable)	\$3,000.00	34.517(a)(2)	Service tag not attached upon completion	\$250.00
6001.251(a)(2)	No registration certificate (fixed)	\$3,000.00	34.517(b)(1)	Fixed system not planned/installed/serviced IAW "manufacturer's Instructions	\$50.00-\$500.00
6001.251(a)(3)	No license	\$3,000.00	34.517(b)(2)	Installation label not affixed to system upon completion	\$250.00

34.510(e)(10)(A)	No C registration for U.S. DOT extinguishers	\$2,000.00		34.517(b)(3)	Installation label not signed and affixed to system by Type A or PL licensee (non pre-engineered)	\$500.00
34.510(e)(10)(B)	No verification of U.S. DOT registration	\$2,000.00		34.517(b)(3)	Licensee who signed label was not at final test (non pre-engineered)	\$500.00
34.510(f)	Registration information not displayed on vehicle	\$250.00		34.517(b)(4)	Service tag not attached after service completion	\$500.00
34.511(f)(1)	Licensee not employed by registered firm	\$2,000.00		34.517(f)	Pre-engineered kitchen system not UL300	\$2,000.00
34.511(f)(3)	Failure to notify SFMO of termination of employee within 14 days	\$250.00		34.517(h)	Fusible link manufacturer date not within 1 year	\$500.00
34.513	Alteration of certificates, licenses, or permits	\$3,000.00		34.517(i)	Actuation cartridge not dated	\$500.00
34.514(a)(5)(b)	Failure to maintain proof of insurance on file at SFMO	\$750.00		34.517(j)	Tamper indicator not dated	\$500.00
34.510(k); 34.511(d)	Failure to revise or change an address within the required 14 days of change	\$250.00				



	Adopted Standards			34.518(a)	Shop drawings not on file or not given to owner	\$500.00
34.517(a)(1)	Failure to abide by adopted standards or manufacturers portable extinguishers	\$50.00-\$500.00		34.518(c)	Shop drawings not signed by EPL	\$500.00
34.517(b)(1)	Failure to abide by adopted standards or manufacturers requirements for fixed extinguishers			34.519(a)	Service tag not completed in detail	\$250.00
	Location and Business Practices			34.520(b)	Service tag not completed each time service is performed	\$500.00
34.510(d)	Failure to maintain business location	\$500.00		34.521(a)	Owner not notified immediately of impaired portable or fixed extinguisher	\$500.00
34.510(e)	Failure to maintain shop	\$50.00-\$500.00		34.521(a)	AHJ not notified within 24 hrs of impaired portable or fixed extinguisher	\$500.00

6001.252(a)(3)	Misrepresentation of goods or services	\$250.00- \$1,000.00	34.521(a)	Written notice to owner; copy of written notice to AHJ within 3 days	\$500.00
34.517(c)	Pre-engineered system not installed or serviced by authorized licensee	\$2,000.00	34.521(a)	Failed to attach red tag to impaired extinguisher	\$500.00
34.517(e)	Fixed system not planned by EPL or professional engineer	\$2,000.00	34.521(a)	Service tag attached to impaired extinguisher	\$1,000.00

34.514(a)(5)(B)		Lapse of Insurance			
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(b)

6002.152(a)	Branch office registration certificate required	\$1,000.00	34.617	Failure to distribute/retain certificate	\$500.00
6002.154(a)	No licensed employee	\$1000.00	34.618	Installation inspection improperly performed/documented	\$50.00-\$500.00
6002.154(b)	No license	\$3,000.00	34.618	Installation inspection improperly documented	\$500.00
6002.154(c)	Licensee not an employee of registered firm	\$750.00	34.618	Installation inspection docs not on file for 5 yrs	\$500.00
6002.301	Engage in business w/o license or registration certificate	\$3,000.00			
	Adopted Standards		34.619(a)	System/modification not planned by authorized person	\$3,000.00
34.616(b)(4)	Violation of standards established by 34.607	\$50.00-\$500.00	34.619(b)	Plans not submitted to AHJ	\$500.00
34.6616(b)(4)	Violation of standards established by manufacturers	\$50.00-\$500.00	34.619(b)	Plans incorrectly submitted to AHJ	\$250.00

	requirements (NFPA 72, §10.3.2)				
				Labels	
	Location Business Practices		34.620(a)	Installation label not affixed to inside of control panel cover	\$500.00
34.610(a)	Failure to maintain business location	\$500.00	34.620(d)	Installation label improperly formatted or incomplete	\$500.00
34.610(b)	Designated employee	\$500.00	34.620(f)	Installation label incorrectly formatted or incomplete (1 or 2 family)	\$500.00
34.610(c)	Registration information not displayed on vehicle	\$250.00	34.621(a)	Service label not affixed to control panel cover	\$500.00
34.611(f)(2)	Failure to notify SFMO of termination of employee within 14 days	\$250.00	34.621(b)	Information about yellow or red label not on service label that corrected the impairments	\$500.00
34.616(b)(1)	Installation not performed by (or under direct supervision of) authorized licensee	\$3,000.00	34.623(c) (yellow) 34.624(c) (red)	Owner or AHJ not notified of impairment	\$500.00

34.616(b)(1)	Certifying licensee not licensed under ACR of primary registered firm or certifying licensee not present for final acceptance test	\$1,000.00	34.621(h)	Service label improperly formatted or incomplete	\$500.00
34.616(b)(2)	Licensee attaching label not licensed under ACR of primary registered firm	\$1,000.00	34.622(a)	Inspection/test label not filled out in detail or not affixed to inside of control panel cover	\$500.00
34.616(b)(2)	Service and maintenance not performed by or under direct supervision of authorized licensee	\$3,000.00	34.622(d)	Owner or AHJ not notified of impairment	\$500.00
6002.302(a)(3)	Misrepresentation of goods or services	\$250.00-\$1,000.00	34.622(j)	Inspection/test label incorrectly formatted/incomplete	\$500.00
34.610(h); 34.611(d)	Failure to revise or change an address within the required 14 days of change	\$250.00			
	Monitoring		34.623(a)	Completed yellow label not attached to outside	\$500.00

				of control panel of impaired system	
34.616(c)(1)	Monitoring an alarm for an unregistered firm	\$3,000.00	34.623(g)	Yellow label incorrectly formatted/incomplete	\$500.00
34.616(c)(2)(A)	Connecting an alarm to an unregistered monitoring firm	\$2,000.00	34.624(a)	Completed red label not attached to outside of impaired system	\$1,000.00
34.616(3)	No licensed technician at central station	\$1,000.00	34.624(g)	Red label improperly formatted/incomplete	\$500.00

Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(c)

Citation	Violation	Fine	Citation	Violation	Fine
	Certificates of Registration and Licenses			Planning and Installation	
6003.151(a)	Engage in business w/o registration certificate	\$3,000.00	34.717(b)	Failed to maintain copy of updated plans	\$500.00
6003.153(b)	Act as responsible managing employee (RME) w/o holding license	\$3,000.00	34.717(c)	Plans do not contain required signatures/ information about firm or licensee	\$500.00
34.710(a)	Subcontracting to unregistered firm to perform work of fire protection sprinkler contractor	\$3,000.00	34.717(c)(2)	Plans not submitted to AHJ for review/permit/rating/record	\$500.00
34.711(a)	Firm's RME not licensed, or license expired	\$1,000.00	34.717(c)(2)	Plans incorrectly submitted to AHJ	\$250.00
34.711(e)(1)	Licensee working not employed by registered firm	\$750.00		Tags	

34.711(e) (2)	Firm failed to notify SFMO of termination of employee w/in 14 days	\$250.00		34.718(a)	Installation tag not completed, not completed in detail, not attached to riser	\$500.00
34.710(g); 34.711(d)	Failure to revise or change an address within the required 14 days of change	\$250.00				
	Adopted Standards			34.718(b)	ITM tag not attached to riser after installation/required tests and inspections	\$500.00
34.716(i)	Planning/installation/service not in accordance with adopted standards	\$50.00-\$500.00		34.719(a)	Service tag not completed and/or not attached to riser	\$500.00
	Location/Business Practices			34.719(c)	New service tag not attached after service	\$500.00
34.710(b)	Failure to maintain business location on certificate of registration	\$500.00		34.719(g)	Service tags improperly formatted	\$250.00
34.711(f)	Individual not licensed for work performed	\$3,000.00		34.720(a)	ITM tag not completed and/or attached to riser after scheduled inspection, testing or maintenance service	\$500.00



34.716(a)	System not installed under supervision of appropriately licensed individual	\$3,000.00		34.720(c)	New ITM tag not completed and attached after each service	\$500.00
34.716(b)	Individual did not affix material and test certificate on or near riser	\$500.00		34.720(g)	ITM tag improperly formatted	\$250.00
34.716(c)	Inspection/test/maintenance service not conducted by appropriately licensed individual	\$3,000.00		34.721(a)	Yellow tag not completed and/or attached to noncompliant system	\$500.00
34.716(d)	Records not available for examination	\$500.00		34.721(c)	Building owner/representative/AHJ not notified of noncompliant system	\$500.00
34.716(e)	Vehicles do not display company name, tel. number and certificate of registration	\$250.00		34.721(f)	Yellow tag improperly formatted	\$250.00
34.716(g)	The planning not performed under the direct supervision of the appropriately licensed RME.	\$500.00		34.722(a)	Red tag not completed and attached to system with an emergency impairment	\$500.00
34.716(h)	Planning, installation, or service of a fire protection sprinkler system not in accord with the minimum	\$3,000.00		34.722(b)	Owner/representative/AHJ not orally notified immediately of impairment	\$500.00

	requirements of the applicable standards of the adopted				
6003.25 2(3)	Misrepresentation	\$250.00- \$1,000.00	34.722(b)	Owner/representative/AHJ not notified in writing of impairment within 24 hours	\$500.00
	Planning and Installation		34.722(g)	Red tag improperly formatted	\$250.00
34.717(a)	Failed to provide as built plans to the owner	\$500.00			
34.717(a)	Failed to maintain a copy of plans	\$500.00			
34.717(b)	Failed to provide updated plans to owner	\$500.00			

34.713(a)(7)(B) Lapse of Insurance					
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(f)

CODE	VIOLATION	FINE
2154.252(b)	Offering 1.4G fireworks for sale from other than an authorized retail location	\$1,000.00
2154.252(d)	Sells fireworks to person who does not hold license or permit	\$1,000.00
34.815(b)(1)	Purchase of 1.4G Fireworks from an unlicensed distributor or jobber.	\$500.00
2154.201(a)	Issue other permit to a person under 18 years old.	\$500.00
34.815(c)(1)	Failed to return permits by March 1 <sup>st</sup>	\$100.00
34.832(16)	No site plan on file with SFMO	\$1,000.00
34.809(a)	Conduct 1.3G display without a permit	\$3,000.00
34.809(a)	Conduct a display without the appropriate licensed operator	\$3,000.00
34.826(c)	Failed to conduct display in compliance with NFPA 1123	\$500.00- \$1,000.00
34.826(f)	Failed to conduct a proximate display in compliance with NFPA 1126	\$500.00- \$1,000.00
34.826(h)	Used a flame effect and failed to comply with NFPA 160	\$500.00- \$1,000.00
34.810(e)	Failure to revise or change an address within the required 14 days of change	\$250.00

Figure: 31 TAC §69.8(a)

large-fruited sand verbena (*Abronia macrocarpa*)  
South Texas ambrosia (*Ambrosia cheiranthifolia*)  
star cactus (*Astrophytum asterias*)  
Texas ayenia (*Ayenia limitaris*)  
Texas poppy-mallow (*Callirhoe scabriuscula*)  
Terlingua Creek cat's-eye (*Oreocrava crassipes*)  
black lace cactus (*Echinocereus reichenbachii* var. *albertii*)  
Davis' green pitaya (*Echinocereus davisii*)  
Nellie's cory cactus (*Escobaria minima*)  
Sneed pincushion cactus (*Escobaria sneedii* var. *sneedii*)  
Guadalupe fescue (*Festuca ligulata*)  
slender rush-pea (*Hoffmannseggia tenella*)  
Texas prairie dawn (*Hymenoxys texana*)  
Texas golden gladeblossom (*Leavenworthia texana*)  
Walker's manioc (*Manihot walkerae*)  
Texas trailing phlox (*Phlox nivalis* ssp. *texensis*)  
white bladderpod (*Physaria pallida*)  
Zapata bladderpod (*Physaria thamnophila*)  
Little Aguja pondweed (*Potamogeton clystocarpus*)  
Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*)  
Navasota ladies'-tresses (*Spiranthes parksii*)  
Texas snowbells (*Styrax platanifolius* ssp. *texanus*)  
ashy dogweed (*Thymophylla tephroleuca*)  
Texas wild-rice (*Zizania texana*)

Figure: 31 TAC §69.8(b)

Leoncita false-foxglove (*Agalinis calycina*)  
bunched cory cactus (*Coryphantha ramillosa* ssp. *ramillosa*)  
dune umbrella-sedge (*Cyperus onerosus*)  
Chisos Mountains hedgehog cactus (*Echinocereus chisosensis* var. *chisosensis*)  
Lloyd's Mariposa cactus (*Sclerocactus mariposensis*)  
small-headed pipewort (*Eriocaulon koernickianum*)  
brush-pea (*Genistidium dumosum*)  
earth fruit (*Geocarpon minimum*)  
Pecos sunflower (*Helianthus paradoxus*)  
Neches River rose-mallow (*Hibiscus dasycalyx*)  
rock quillwort (*Isoetes lithophila*)  
gypsum scalebroom (*Lepidospartum burgessii*)  
Livermore sweet-cicely (*Osmorhiza bipatriata*)  
Hinckley's oak (*Quercus hinckleyi*)  
Houston daisy (*Rayjacksonia aurea*)



**IN**

**ADDITION**

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

**Office of the Attorney General**

Child Support Tax Charts 2025

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the 2025 Tax Charts are not included in the print version of the Texas Register. The 2025 Tax Charts are available in the on-line version of the December 20, 2024, issue of the Texas Register.)*

TRD-202405894  
Justin Gordon  
General Counsel  
Office of the Attorney General  
Filed: December 6, 2024



**Comptroller of Public Accounts**

Certification of the Single Local Use Tax Rate for Remote Sellers - 2025

The Comptroller of Public Accounts, administering agency for the collection of the Single Local Use Tax Rate for Remote Sellers, has determined, as required by Tax Code, §151.0595(e), that the estimated

average rate of local sales and use taxes imposed in this state during the preceding state fiscal year ending August 2024 is 1.75%. This rate will be in effect for the period of January 1, 2025 to December 31, 2025.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on December 6, 2024.

TRD-202405899  
Jenny Burleson  
Director, Tax Policy Division  
Comptroller of Public Accounts  
Filed: December 6, 2024



Local Sales Tax Rate Changes Effective January 1, 2025

The city sales and use tax will be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code, effective January 1, 2025 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Woodsboro (Refugio Co)	2196022	.020000	.082500

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective January 1, 2025 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
McCamey (Upton Co)	2231029	.020000	.082500

The additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective December 31, 2024 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Cumby (Hopkins Co)	2112023	.017500	.080000
Millsap (Parker Co)	2184080	.015000	.077500

A 1 percent special purpose district sales and use tax will become effective January 1, 2025 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Fort Bend County Emergency Services District No. 2-A	5079774	.010000	SEE NOTE 1

A 1 3/4 percent special purpose district sales and use tax will become effective January 1, 2025 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Ellis County Emergency Services District No. 2-A	5070531	.017500	SEE NOTE 2

A 2 percent special purpose district sales and use tax will become effective January 1, 2025 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Ellis County Emergency Services District No. 2	5070522	.020000	SEE NOTE 3
Fort Bend County Emergency Services District No. 2	5079765	.020000	SEE NOTE 4

The combined area has been created to administer the local sales and use tax between overlapping local jurisdictions as permitted under Chapter 321 of the Texas Tax Code, effective January 1, 2025 in the entities listed below.

COMBINED AREA NAME	LOCAL CODE	NEW RATE	DESCRIPTION
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Nixon/Gonzales County Emergency Services District No. 1	6089601	.003750	SEE NOTE 5
Rosenberg/Fort Bend County Assistance District No. 12	6079630	.020000	SEE NOTE 6

NOTE 1: The Fort Bend County Emergency Services District No. 2-A is the portion of the district that may include areas responsible for collecting and remitting sales tax to the city of Houston for a strategic partnership agreement between a utility district and the city, and portions of Fort Bend County Assistance District Nos. 1 and 9, which have a special purpose district sales tax. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 2: The Ellis County Emergency Services District No. 2-A is the portion of the district located in the unincorporated portion of Ellis County that overlaps the Ovilla Municipal Development District, which has a special purpose district sales tax. Contact the district representative at 214-325-7186 for additional boundary information.

NOTE 3: The Ellis County Emergency Services District No. 2 is located in the northeast portion of Ellis County. The district excludes the cities of Midlothian and Ovilla. The unincorporated areas of Ellis County in ZIP Codes 75154, 75167, 76065 and 76084 are partially located in the district. Contact the district representative at 214-325-7186 for additional boundary information.

NOTE 4: The Fort Bend County Emergency Services District No. 2 is located in the northern portion of Fort Bend County. The district excludes the city of Katy and the Fort Bend County Assistance District Nos. 7 and 10, which all have a local sales tax. The unincorporated areas of Fort Bend County in ZIP Codes 77450 and 77494 are partially located in the district. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 5: The Nixon/Gonzales County Emergency Services District No. 1 combined area is the area within the Gonzales County Emergency Services District No. 1 annexed by the city of Nixon on or after September 16, 2024.

NOTE 6: The Rosenberg/Fort Bend County Assistance District No. 12 combined area is the area within Fort Bend County Assistance District No. 12 annexed by the city of Rosenberg on or after July 16, 2024.

TRD-202405946  
 Jenny Bursleson  
 Director, Tax Policy Division  
 Comptroller of Public Accounts  
 Filed: December 10, 2024

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/16/24-12/22/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/16/24-12/22/24 is 18.00% for commercial<sup>2</sup> credit.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202405955  
 Leslie L. Pettijohn  
 Commissioner  
 Office of Consumer Credit Commissioner  
 Filed: December 11, 2024



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 27, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 27, 2025**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: C and R WATER SUPPLY INCORPORATED; DOCKET NUMBER: 2024-0682-PWS-E; IDENTIFIER: RN101201424; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$55; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: CARO WATER SUPPLY CORPORATION; DOCKET NUMBER: 2024-0846-PWS-E; IDENTIFIER: RN101184141; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$64; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: CARRINGTON ASSOCIATES, INCORPORATED; DOCKET NUMBER: 2024-0809-PWS-E; IDENTIFIER: RN102674579; LOCATION: Valley View, Cooke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency opera-

tions; PENALTY: \$61; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Chico; DOCKET NUMBER: 2023-1487-PWS-E; IDENTIFIER: RN101273076; LOCATION: Chico, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$312; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: City of Eldorado; DOCKET NUMBER: 2023-1792-MSW-E; IDENTIFIER: RN102142999; LOCATION: Eldorado, Schleicher County; TYPE OF FACILITY: Type I-Arid Exempt landfill; RULES VIOLATED: 30 TAC §330.139 and municipal solid waste (MSW) Permit Number 2264, Site Operating Plan (SOP), Section Number 10 Control of Windblown Waste and Litter, Item a., by failing to control windblown waste and litter at the active working face; and 30 TAC §330.165(a) and MSW Permit Number 2264, SOP, Section Number 24 Landfill Cover, Item a. Daily Cover, by failing to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Hamilton; DOCKET NUMBER: 2021-1551-MWD-E; IDENTIFIER: RN101918068; LOCATION: Hamilton, Hamilton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010492002, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$8,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$8,125; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Jayton; DOCKET NUMBER: 2024-0706-PWS-E; IDENTIFIER: RN101385128; LOCATION: Jayton, Kent County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(B) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds an applicable, valid Class C or higher groundwater license issued by the Executive Director; PENALTY: \$825; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: City of Mathis; DOCKET NUMBER: 2024-0800-PWS-E; IDENTIFIER: RN101388130; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: City of Rio Hondo; DOCKET NUMBER: 2024-0735-PWS-E; IDENTIFIER: RN101209195; LOCATION: Rio Hondo, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete

Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$92; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: CRYSTAL FARMS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2024-0843-PWS-E; IDENTIFIER: RN101437770; LOCATION: Tatum, Rusk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$63; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2024-0755-PWS-E; IDENTIFIER: RN102687944; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: \$1,100; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: Cypress Forest Public Utility District; DOCKET NUMBER: 2024-0825-PWS-E; IDENTIFIER: RN101229599; LOCATION: Champion Forest, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: De'Shaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(13) COMPANY: DeBerry Water Supply Corporation; DOCKET NUMBER: 2024-0872-PWS-E; IDENTIFIER: RN101275014; LOCATION: De Berry, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(g), by failing to collect water samples after repairs are made to existing facilities with results that indicate that the facilities are free of microbiological contamination before they are placed into service; and 30 TAC §290.46(q), by failing to institute special precautions, protective measures, and Boil Water Notices within 24 hours in the event of low distribution pressures or of becoming aware of conditions which indicate that the potability of the drinking water supply has been compromised; PENALTY: \$2,346; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Dustin Martinez dba Martinez Ranch Subdivision; DOCKET NUMBER: 2023-0700-PWS-E; IDENTIFIER: RN106539547; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l) and TCEQ Agreed Order Docket Number 2015-1480-MLM-E, Ordering Provision Number 2.c.i., by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(4), by failing to provide all ground storage tanks with a liquid level indicator; 30 TAC §290.45(b)(1)(C)(ii), Texas Health and Safety Code (THSC), §341.0315(c), and TCEQ Agreed Order Docket Number 2015-1480-MLM-E, Ordering Pro-

vision Number 2.g.ii, by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iv), THSC, §341.0315(c), and TCEQ Agreed Order Docket Number 2015-1480-MLM-E, Ordering Provision Number 2.g.i, by failing to provide a minimum pressure tank capacity of 20 gallons per connection; and 30 TAC §290.121(a) and (b) and TCEQ Agreed Order Docket Number 2015-1480-MLM-E, Ordering Provision Number 2.c.ii, by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$29,500; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Hungerford Municipal Utility District 1; DOCKET NUMBER: 2024-0705-PWS-E; IDENTIFIER: RN102690872; LOCATION: Hungerford, Wharton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) and receive approval prior to making a significant change or addition where the change in the existing systems results in an increase or decrease in production, treatment, storage or pressure maintenance; 30 TAC §290.43(d)(2), by failing to provide a pressure release device and an easily readable pressure gauge on all pressure tanks; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine the air-water-volume for each of the two pressure tanks; and 30 TAC §290.46(f)(2) and (3)(A)(iv) and (B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; PENALTY: \$2,800; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Jonestown Water Supply Corporation; DOCKET NUMBER: 2024-0734-PWS-E; IDENTIFIER: RN100824911; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$420; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(17) COMPANY: LEONCITA CATTLE COMPANY; DOCKET NUMBER: 2024-0206-PWS-E; IDENTIFIER: RN105946628; LOCATION: Alpine, Brewster County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to construction of a new public water supply; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: MHP Utility Systems, Incorporated; DOCKET NUMBER: 2024-0695-MWD-E; IDENTIFIER: RN103118980; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015237001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$10,875; ENFORCEMENT

COORDINATOR: Sarah Castillo, (512) 239-1130; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: ROCKSPRINGS 380 RVP LLC; DOCKET NUMBER: 2023-0896-PWS-E; IDENTIFIER: RN111755914; LOCATION: Decatur, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data, as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$1,675; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: SOUTH MEDFORD EXPRESS, INCORPORATED dba Bigs 3823; DOCKET NUMBER: 2024-0631-PST-E; IDENTIFIER: RN101897742; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.48(e)(1) and TWC, §26.3475(c)(1), by failing to conduct a test of the proper operation of the release detection equipment at least annually; and 30 TAC §334.48(h)(1)(B)(ii) and TWC, §26.3475(c)(2), by failing to conduct the annual walkthrough inspection of the UST containment sumps; PENALTY: \$14,138; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202405927

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 10, 2024



### Correction of Error

The Texas Commission on Environmental Quality (commission) published adopted amendments to 30 TAC §§2301.1 -230.11 in the December 6, 2024, issue of the *Texas Register* (49 TexReg 9986). Due to an error by the commission, two sentences in the response to comments section were published incorrectly.

In Comment 26, an incorrect symbol was published. The sentence that comprises the third paragraph of the response should read as follows:

*"at a minimum the results of an aquifer test demonstrating sufficient groundwater availability that was completed no more than 3 years before the date of the plat application within a ¼-mile radius of the proposed subdivision and was conducted in compliance with any applicable rules of any groundwater conservation district in which the proposed subdivision will be located, and any other information required under the rules of such groundwater conservation district and the municipal or county authority, the municipal or county authority determines that sufficient groundwater is available and will continue to be available to the subdivision tract of land."*

In Comment 30, Kerr County is incorrectly referred to as "Kerry County". The sentence should read as follows:

Kerr County Engineering requested TCEQ add definitions for "expansion of an existing public water supply system" and "groundwater under the subdivision."

TRD-202405962

Charmaine Backens

Deputy Director of Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 11, 2024



### Enforcement Orders

An agreed order was adopted regarding White Rock Excavation, Inc., Docket No. 2022-0513-WQ-E on December 10, 2024 assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wellborn Special Utility District, Docket No. 2022-1660-PWS-E on December 10, 2024 assessing \$1,350 in administrative penalties with \$270 deferred. Information concerning any aspect of this order may be obtained by contacting Rachel Frey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of Combes, Docket No. 2022-1668-PWS-E on December 10, 2024 assessing \$213 in administrative penalties with \$46 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rozina Investments LLC dba Park-It Market, Docket No. 2023-0587-PST-E on December 10, 2024 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegele, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Baylor Scott & White Health dba Baylor Scott & White Medical, Docket No. 2023-0722-PST-E on December 10, 2024 assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 82 TRAVEL CENTER INC, Docket No. 2023-0871-PST-E on December 10, 2024 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pilot Water Solutions LLC, Docket No. 2023-1091-MSW-E on December 10, 2024 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H M & S ENTERPRISES, INC. dba Super Brownies Food, Docket No. 2023-1143-PST-E on December 10, 2024 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SPEEDY STOP FOOD STORES, LLC dba Speedy Stop 105, Docket No. 2023-1196-PST-E on December 10, 2024 assessing \$2,941 in administrative penalties with \$588 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegele, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Portable Restrooms, LLC., Docket No. 2023-1372-WQ-E on December 10, 2024 assessing \$3,750 in administrative penalties with \$750. Information concerning any aspect of this order may be obtained by contacting Arti Patel, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MG7 LLC, Docket No. 2023-1494-PST-E on December 10, 2024 assessing \$3,450 in administrative penalties with \$690 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tejas Market Pleasanton, LLC dba Tejas Market, Docket No. 2023-1694-PST-E on December 10, 2024 assessing \$6,576 in administrative penalties with \$1,315 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Murphy Oil USA, Inc., Docket No. 2024-0094-WQ-E on December 10, 2024 assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Waste Connections Lone Star, Inc. dba WC Minnis Drive Transfer Station, Docket No. 2024-0149-MSW-E on December 10, 2024 assessing \$3,862 in administrative penalties with \$772. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding New Alsace Water Supply Corporation, Docket No. 2024-0207-PWS-E on December 10, 2024 assessing \$989 in administrative penalties with \$197 deferred. Information concerning any aspect of this order may be obtained by contacting Mason Demasi, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Joaquin, Docket No. 2024-0238-PWS-E on December 10, 2024 assessing \$4,026 in administrative penalties with \$805 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Baird, Docket No. 2024-0252-PWS-E on December 10, 2024 assessing \$3,645 in administrative penalties with \$324 deferred. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Triple R Assets, LLC, Docket No. 2024-0253-PWS-E on December 10, 2024 assessing \$3,000 in administrative penalties with \$600. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Utilities, Inc. of Texas, Docket No. 2024-0256-MWD-E on December 10, 2024 assessing \$5,625 in administrative penalties with \$1,125. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Inez Convenience Services LLC dba Smitty's, Docket No. 2024-0266-PWS-E on December 10, 2024 assessing \$5,955 in administrative penalties with \$1,191. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Water Utilities, L.P., Docket No. 2024-0279-PWS-E on December 10, 2024 assessing \$5,543 in administrative penalties with \$1,108 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PIONEER GROCERY #ONE, INC. dba ENERGY STOP, Docket No. 2024-0280-PWS-E on December 10, 2024 assessing \$1,913 in administrative penalties with \$382 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Meadow, Docket No. 2024-0284-PWS-E on December 10, 2024 assessing \$1,050 in administrative penalties with \$210 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2024-0318-PWS-E on December 10, 2024 assessing \$2,750 in administrative penalties with \$550 deferred. Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2024-0322-PWS-E on December 10, 2024 assessing \$2,100 in administrative penalties with \$420 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas Inc, Docket No. 2024-0458-PWS-E on December 10, 2024 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Mason Demasi, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ladonia, Docket No. 2024-0473-PWS-E on December 10, 2024 assessing \$300 in administrative penalties with \$60 deferred. Information concerning any aspect of this order may be obtained by contacting Taner Hengst, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Haslet, Docket No. 2024-0483-WQ-E on December 10, 2024 assessing \$4,450 in administrative penalties with \$890 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UNITED DIRT CONTRACTORS, INC., Docket No. 2024-0510-WQ-E on December 10, 2024 assessing \$5,145 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kristopher Jackson, Docket No. 2024-0548-LII-E on December 10, 2024 assessing \$563 in administrative penalties with \$112 deferred. Information concerning any aspect of this order may be obtained by contacting Corinna Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PRESSER CONSTRUCTION, INC., Docket No. 2024-0791-WQ-E on December 10, 2024 assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nisaa Investment Inc. dba Royal Oak Mart, Docket No. 2024-0796-PST-E on December 10, 2024 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Heidelberg Materials Southwest AGG LLC, Docket No. 2024-0810-MLM-E on December 10, 2024 assessing \$3,9000 in administrative penalties with \$780 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202405964  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: December 11, 2024



Extension of Public Comment Period on Proposed List of Best Management Practices for Certain Operational Issues at

## Aggregate Production Operations--Legislative Requirement from Agency Sunset Review

In the December 6, 2024, issue of the *Texas Register* (49 TexReg 10027), the Texas Commission on Environmental Quality (TCEQ) published notice that the agency has issued on its website and made available for public comment a proposed list of general Best Management Practices (BMPs) for certain operational issues at Aggregate Production Operations (APOs). TCEQ was not able to activate the webpage for these BMPs on the date planned but has since done so. Because of this delay, the public comment period will be extended for two weeks and the new close of comment date will be 11:59 p.m. on January 24, 2025.

The proposed list of general APO BMPs can be reviewed via TCEQ's public website at: <https://www.tceq.texas.gov/assistance/industry/aggregate-production/best-management-practices>.

Written comments may be mailed to Jess Robinson, MC 175, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be submitted electronically via <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All written comments must be received at TCEQ by 11:59 p.m. on January 24, 2025, and should reference "APO BMP List Proposal."

After the public comment period, TCEQ may revise the proposed list of APO BMPs, if appropriate. The final list of APO BMPs will then be published on TCEQ's website, together with any other additional information if needed.

For further information about the proposed list of general APO BMPs, please contact Jess Robinson at [jess.robinson@tceq.texas.gov](mailto:jess.robinson@tceq.texas.gov).

TRD-202405951  
Gitanjali Yadav  
Deputy Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: December 10, 2024



## Notice of Correction to Agreed Order Number 20

In the October 4, 2024, issue of the *Texas Register* (49 TexReg 8198), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 20, for OXY USA Incorporated; Docket Number 2022-0295-AIR-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$219,105."

The reference to the Supplemental Environmental Project Offset Amount should be corrected to read: "\$87,642."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202405928  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: December 10, 2024



## Notice of District Petition TCEQ Internal Control No. D-07082024-020

Notice issued December 5, 2024

TCEQ Internal Control No. D-07082024-020; Green Valley Special Utility District (the "District") of Bexar, Comal and Guadalupe Counties filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy a revised impact fee of \$7,423 per equivalent dwelling unit connection within the District's service area. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the District's office during regular business hours.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202405956

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 11, 2024

◆ ◆ ◆  
Notice of District Petition TCEQ Internal Control No.  
D-11132024-019

Notice issued December 5, 2024

TCEQ Internal Control No. D-11132024-019: Dayton Land Investment, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Liberty County Municipal Utility District No. 18 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Capital Farm Credit, ACA, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 328.5 acres located within Liberty County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary wastewater system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters; and (4) such other purchase, construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises, and road facilities, as shall be consistent with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$45,010,000 (\$32,750,000 for water, wastewater, and drainage plus \$12,260,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written

hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202405957

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: December 11, 2024



### Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 27, 2025**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 27, 2025**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Jerry M. Stéll; DOCKET NUMBER: 2022-0508-WOC-E; TCEQ ID NUMBER: RN103465167; LOCATION: 2702 Tipps Road, Crossroads, Denton County; TYPE OF FACILITY: process control duties for the production, treatment, or distribution of public drinking water; RULES VIOLATED: TWC, §37.003, Texas Health and Safety Code, §341.034(b), and 30 TAC §30.5(a) and §30.381(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$1,191; STAFF ATTORNEY: Alexander Kepczyk, Litigation, MC 175, (512) 239-3992;

REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202405945

Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: December 10, 2024



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 27, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 27, 2025**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Jason Wheeler; DOCKET NUMBER: 2022-0756-PST-E; TCEQ ID NUMBER: RN102859345; LOCATION: 3115 West 10th Street, Plainview, Hale County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §37.815(a) and (b) and §334.54(e)(5), by failing to provide financial assurance or conduct a site check and perform any necessary corrective actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements; PENALTY: \$3,375; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Lazarus Refining & Marketing, LLC; DOCKET NUMBER: 2020-1284-IHW-E; TCEQ ID NUMBER: RN105094031; LOCATION: 11372 United States Highway 87 East, Nixon, Wilson County; TYPE OF FACILITY: oil refinery; RULES VIOLATED: 30 TAC §335.2(a) and §335.43(a) and TCEQ Agreed Order, Docket Number 2017-0018-IHW-E, Ordering Provision Number 2.a, by causing, suffering, allowing, or permitting the storage of industrial hazardous waste (IHW) without authorization; 30 TAC §335.62,



335.503(a), and 335.504, 40 Code of Federal Regulations §262.11, and TCEQ Agreed Order, Docket Number 2017-0018-IHW-E, Ordering Provision Number 2.b.ii, by failing to conduct hazardous waste (HW) determinations and classifications; 30 TAC §335.9(a)(2), by failing to submit to the executive director a complete and correct Annual Waste Summary (AWS) detailing the management of each waste generated on-site during the reporting calendar year; 30 TAC §335.8(b), by failing to properly complete all closure obligations for solid waste management units at an IHW facility; 30 TAC §335.69(a)(2) and (3), by failing to record the date that each period of waste accumulation begins on all HW storage containers, also, by failing to label each waste storage container clearly with the words, "Hazardous Waste"; 30 TAC §335.4, by causing, suffering, allowing, or permitting the unauthorized disposal of industrial solid waste (ISW); 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; and 30 TAC §335.9(a)(1)(A) and TCEQ Agreed Order, Docket Number 2017-0018-IHW-E, Ordering Provision Number 2.b.i, by failing to maintain records of all IHW and ISW activities; PENALTY: \$355,087; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202405944

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 10, 2024



#### Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be non-compliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 27, 2025**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 27, 2025**. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone number; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: OHK GLOBAL INC dba Eagle 1; DOCKET NUMBER: 2024-0376-PST-E; TCEQ ID NUMBER: RN106208887; LOCATION: 700 South Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(B) and (2)(A)(i) and (iii), by failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, also, by failing to monitor the piping associated with the UST system installed on or after January 1, 2009 in a manner which will detect a release at a frequency of at least once every 30 days, in addition, by failing to conduct a test of the proper operation of the release detection equipment at least annually; TWC, §26.3475(c)(2) and 30 TAC §334.48(g)(1)(A)(ii), (B), and (h)(1)(B)(i), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, also, by failing to inspect overfill prevention equipment at least once every three years to ensure that overfill prevention equipment is set to activate at the correct level, in addition, by failing to annually check containment sumps for damage, leaks to the containment area, and for leak in the interstitial area; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, B, and C for the facility; PENALTY: \$6,008; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: OHK GLOBAL INC dba Panthers 2; DOCKET NUMBER: 2024-0388-PST-E; TCEQ ID NUMBER: RN101902054; LOCATION: 811 Voss Avenue, Odem, San Patricio County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: OHK GLOBAL INC dba Snappy Foods 21; DOCKET NUMBER: 2024-0370-PST-E; TCEQ ID NUMBER: RN105873723; LOCATION: 8149 Spid Drive, Corpus Christi, Nueces County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(B) and (2)(A)(i) and (iii), by failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, also, by failing to equip each separate pressurized pipe with an automatic line leak detector, in addition, by failing to monitor the piping associated with the UST system installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(c)(2) and 30 TAC §334.48(g)(1)(A)(ii) and (h)(1)(B)(ii), by failing to test the spill prevention equipment at least once every three years to en-

sure the equipment is liquid tight, also, by failing to conduct annual walkthrough inspections for regulated substance releases in the containment sump and to the environment; 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 (relating to Reporting of Suspected Releases) within 30 days; 30 TAC §334.72, by failing to report suspected releases to the agency within 24 hours of discovery; 30 TAC §334.45(c)(3)(A), by failing to ensure that emergency shutoff valves (also known as shear or impact valves) are installed and securely anchored at the base of each dispenser; 30 TAC §334.7(d)(1)(A) and §334.8(c)(4)(C), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership or operator change; and TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to assure that all spill and overflow prevention devices are maintained in good operating condition; PENALTY: \$36,508; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(4) COMPANY: OHK GLOBAL INC dba Snappy Foods 22; DOCKET NUMBER: 2024-0369-PST-E; TCEQ ID NUMBER: RN105909402; LOCATION: 7012 Wooldridge Road, Corpus Christi, Nueces County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(B) and (2)(A)(i) and (iii), by failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, also, by failing to equip each separate pressurized pipe with an automatic line leak detector, in addition, by failing to monitor the piping associated with the UST system installed on or after January 1, 2009 in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(c)(2) and 30 TAC §334.48(g)(1)(A)(ii) and (h)(1)(B)(ii), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, also, by failing to conduct annual walkthrough inspections for regulated substance releases in the containment sump and to the environment; 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 (relating to Reporting of Suspected Releases) within 30 days; 30 TAC §334.72, by failing to report suspected releases to the agency within 24 hours of discovery; 30 TAC §334.45(c)(3)(A), by failing to ensure that emergency shutoff valves (also known as shear or impact valves) are installed and securely anchored at the base of each dispenser; TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C)(ii), by failing to equip each UST with a valve or other appropriate device designed to automatically restrict the flow of regulated substances into the UST when the liquid level in the UST reaches a preset level; 30 TAC §334.51(a)(6) and (b)(2)(C), by failing to assure that all spill and overflow prevention devices are maintained in good operating condition and failed to ensure that each tank is equipped with overflow prevention equipment; and 30 TAC §334.7(d)(1)(A) and §334.8(c)(4)(C), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership or operator change; PENALTY: \$46,758; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

TRD-202405943

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 10, 2024

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of, November 18, 2024 to December 6, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, December 13, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday, January 12, 2025.

Federal Agency Activities:

**Applicant:** Texas Department of Transportation-Beaumont District

**Location:** The project site is located within palustrine emergent wetlands and perennial stream, directly abutting Farm-to-Market Road 365, approximately 11 miles south of Beaumont and 5 miles west of Nederland, in Jefferson County, Texas.

**Latitude and Longitude:** 29.914235, -94.041702

**Project Description:** The applicant proposes to discharge approximately 2,447 cubic yards (CY) of fill material into regulated aquatic resources. This fill material will result in the permanent loss of 1.076 acres of palustrine emergent wetland with an additional temporary loss of 0.428 acres of palustrine emergent wetland and 0.003 acres of perennial stream. The proposed project at FM 365 is to extend an existing bridge crossing over Rhodair Gully/Gallier Canal approximately 1.3 miles, expanding the project 100 feet to the west of Bordages Road to Jade Avenue. The existing right-of-way is 13.35 acres and 4.23 acres of additional proposed right-of-way is necessary for the project. The proposed right-of-way will include an additional 5 feet south and west of Rhodair Gully for a total of 45 feet south of the existing right-of-way. The portion of the project located south and east of Rhodair Gully will be extended up to 110 feet. The applicant proposed to mitigate for the proposed impacts by purchasing a total of 3.228 palustrine emergent credits from the Blue Elbow Mitigation Swamp Bank.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2024-00709. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**CMP Project No:** 25-1063-F2

**Applicant:** United States Fish and Wildlife Service

**Location:** The project site is located in the Gulf Intracoastal Waterway (GIWW) along the shores of the San Bernard National Wildlife Refuge extending from Cedar Lake to Cowtrap Lake, in portions of Brazoria and Matagorda Counties, Texas.

**Latitude and Longitude:**

Beginning: 28.813766, -95.539575

End: Latitude: 28.866944, -95.449722

**Project Description:** The applicant proposes to discharge 57,283 cubic yards of fill material into 18.86 acres of shallow waters of the GIWW for the construction of a 7.02-linear-mile breakwater constructed in seven segments. The breakwaters will have a 2:1 vertical slope and crest elevation of 3.0 feet NAV88. Riprap will be clean and free of hazardous materials. Fish passages will be incorporated every 500 linear feet and span 30-foot-wide. Navigation beacons will be placed at the beginning, end, and every 550 feet of each breakwater.

The applicant has stated that the project is consistent with 501.24 (now 26.24) Policies for Construction of Waterfront Facilities and Other Structures and Submerged Lands as it will not interfere with public navigation, will not significantly interfere with natural coastal processes, and avoids shading of critical areas and other adverse effects. Breakwater placements are situated in a manner to avoid known oyster reefs to the maximum practicable extent. A Shallow Water Access Plan will be implemented to avoid and minimize impacts to waters of the United States (WOTUS). Mitigation is not proposed.

The project site consists of the shallow, open bay bottoms of the GIWW along a section that is bordered by the San Bernard National Wildlife Refuge. The shoreline has experienced heavy erosion due to wave and wind action that has resulted in coastal marsh degradation and loss.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG- 2024-00183. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**CMP Project No:** 25-1075-F2

**Applicant:** Texas Department of Agriculture

**Location:** The project site is located adjacent to Shank Lank in Brazoria County.

**Project Description:** Texas Department of Agriculture proposes to utilize a United States Department of Agriculture funded grant program (Resilient Food Systems Infrastructure Program)

to allow Harvest for the Hungry (a 501c3 nonprofit organization) to lead and execute the construction of a storage facility for local, fresh, nutritious farmed foods, to enhance food distribution in the rural corridors of Brazoria, Fort Bend, Harris, and Matagorda counties.

**Type of Application:** Texas Department of Agriculture is utilizing United States Department of Agriculture funding for a non-profit program project.

**CMP Project No:** 25-1079-F2

Federal License and Permit Activities:

**Applicant:** Air Liquide Large Industries L.P.

**Location:** The project site is located in the Brazos River and Flag Lake, approximately 0.15 miles past the end of Country Road 299 in an existing utility corridor, near Freeport, in Brazoria County, Texas.

**Latitude and Longitude:** 29.002651, -95.434879

**Project Description:** The applicant proposes to decommission in place an existing pipeline bundle consisting of one 6-inch, one 10-inch, and one 12-inch-diameter pipelines under the Brazos River. There are three partial or full exposures of pipelines in the bottom of the river at a depth between 32-35 feet deep. Approximately 10-foot of the 6-inch pipeline is exposed, but not suspended; 20-foot of the 10-inch pipeline is exposed and suspended; and 30-foot of the 12-inch pipeline is exposed and suspended. The existing pipelines segments under the river will be decommissioned by cleaning, filling with water, and removal of the cathodic protection. The portions of the pipelines under the Velasco Drainage District flood levee on the north side of the river

will be cut, capped, and filled using cement grout. No compensatory mitigation is proposed.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-1977-00010. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

**CMP Project No:** 25-1049-F1

**Applicant:** Valero Refining - Texas. L.P.

**Location:** The project site is located in the Inner Harbor of the Port of Corpus Christi along the Corpus Christi Ship Channel (CCSC), on the south side of Tule Lake Channel at 1147 Cantwell Lane, in the vicinity of Corps of Engineers Station 1414+35.00 to Station 1388+30.00, Corpus Christi, Nueces County, Texas.

**Latitude and Longitude:** 27.82056, -97.48278

**Project Description:** The applicant requests a modification to the existing SWG-2007-00263, which expires on 31 December 2027. The current permit authorizes the structures and maintenance dredging activities at their Ship Dock 3, located on the west end of the inner harbor along the CCSC. The applicant seeks to perform various upgrades to their existing dock in order to accommodate deeper drafts at their berth. The activity would consist of constructing a 10-foot by 70-foot pile-supported extension along the face of the dock, installing six (6) new mooring structures, four (4) breasting structures, and four (4) barge monopiles. Piles would be installed from a marine rig and driven to final grade via diesel impact hammer. The applicant would also install new walkways and improvements to 527 linear feet of an existing steel sheet pile bulkhead consisting of installation of new steel sheet pile with 5 feet of crushed stone backfill (2,635 square feet of fill), and concrete revetment or riprap along 632 linear feet of currently unprotected shoreline and in front of an existing timber bulkhead. 1,353 cubic yards (CY) of fill would be discharged below the Mean High Water (MHW) mark within an approximate 12,640-square-foot area. Additionally, the dredge area would be deepened to match the new CCSC depth of (-)54 ft. plus 2 ft. advanced maintenance with 2 ft. allowable overdepth to a maximum depth of (-)58 ft. Mean Lower-Low Water (MLLW). An estimated amount of up to 182,570 CY of new work dredging would be required, consisting of 140,052 CY of required dredging (-54 ft. plus 2 ft. of advanced maintenance) and 42,518 CY of allowable overdepth (total of (-)58 ft. MLLW).

The applicant is currently authorized to utilize the following DMPAs for placement of maintenance dredge materials from its ship and barge docks per SWG-2007-00263: South Shore DMPA Cells A and B, DMPA No. 1, Herbie Maurer, Tule Lake DMPA Cells A, B and C, and Suntide DMPA. The applicant requests use of the same DMPAs for placement of new work and maintenance material from this proposed project. No utilization of new/ additional DMPAs is requested. Additionally, the applicant requests a 10-year authorization to conduct maintenance dredging. No compensatory mitigation is being considered for this project.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2007-00263. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 25-1062-F1

**Applicant:** Nueces County Coastal Parks

**Location:** The project site is located in adjacent to Packery Channel, at Packery Channel Nature Park, in Corpus Christi, Nueces County, Texas.

**Latitude and Longitude:** 27.628508, -97.217325

**Project Description:** The applicant proposes to construct both a living shoreline and nearshore breakwaters to provide shoreline protection from erosion, and a pier for park enhancement.

The project would use two types of breakwaters - primary breakwaters and gap protection breakwaters. The project proposes to fill approximately 0.41 acre (3,510 cubic yards [CY]) of unvegetated bay bottom for primary breakwaters. The primary breakwater structures would be constructed parallel to the shoreline and vary in dimensions. The maximum bottom width of the primary breakwaters would be approximately 28.5 feet and have a maximum length of 130 feet. The proposed gap breakwaters would be placed approximately five to ten feet shoreward between the primary breakwaters and fill approximately 0.08 acre (475 CY) of unvegetated bay bottom. The gap breakwaters would vary in dimensions but have a maximum width of approximately 15 feet and a maximum length of 50 feet. The combined footprint of the breakwater structures total 0.49 acre.

The pile-supported, U-shaped pier would consist of two walkways that extend approximately 97.5 feet perpendicular from the existing shoreline, and an approximately 204-foot walkway situated parallel to the existing shoreline. The pier would be supported by 72 12-inch-diameter, pile driven timber piles. All walkways would be approximately 10.7 feet wide and deck spacing would be 0.5-inch gaps. The deck would be at an elevation of +6.5 feet NAVD88. The footprint of the pier is approximately 0.1 acre (4,530 square feet) with approximately 0.09 acre (3,740 square feet) within the mean high water.

The project would develop approximately 0.35 acre (15,110 square feet) of living shoreline by planting marsh vegetation between the proposed breakwaters on the existing shoreline. Smooth cordgrass (*Spartina alterniflora*) would be placed between +0.5 and +2.0 feet NAVD88 and salt-meadow grass (*Spartina patens*) and associated marsh vegetation would be planted between +2.0 and +2.5 NAVD88. The applicant has not proposed mitigation.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2024-00549. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 25-1067-F1

**Applicant:** The Park Board of Trustees of the City of Galveston

**Location:** The project site is located along the shoreline of the Gulf of Mexico beginning at the South Jetty and extending westward for approximately 59,265 linear feet to the terminus of the seawall, in Galveston, Galveston County, Texas. The reach between 47th Street to 51st Street will be excluded to avoid the seawater intake system maintained by the National Oceanic and Atmospheric Administration (NOAA).

**Latitude and Longitude:**

Begin Beach Fill Template: Latitude: 29.331535, -94.726217

End Beach Fill Template: Latitude: 29.241835, -94.868599

**Project Description:** The applicant is proposing beach nourishment activities which will result in the permanent placement of a maximum of 2 million cubic yards of beach quality sand material along 59,265 linear feet of Gulf of Mexico shoreline for the purpose of re-establishing a degraded section of shoreline to provide a more stable and resilient coast and reduce erosion. The scope of work includes (1) the removal of sand either by hydraulic cutterhead dredge or hopper dredge methods from submerged borrow sources or by excavating sand from

upland borrow sources as depicted on the project plans, (2) the transportation of sand by either pumping sand through a temporary offshore pipeline (submerged at the approximate -15 foot depth contour and resting on the sea shore) from submerged borrow sources or by trucks which will be used to haul the sand from the upland borrow sites to the beach nourishment template, and (3) the placement and redistribution of sand within the template using heavy equipment. The temporary pipelines used to transport the dredge sand material could be located either upland, offshore (extending from either from the hydraulic cutterhead dredge or the hopper dredge and submerged and resting on top of the sea floor), or a combination of upland and offshore at the locations depicted on the project plans. The temporary pipeline will extend from either the hydraulic cutterhead dredge or the hopper dredge to the designated beach placement area within designated corridors and will run parallel to the beach from the South Jetty Borrow Area until it is directed towards the beach. Temporary crossings will be placed over groins to allow vehicular traffic to pass unimpeded. These temporary bridges will be constructed of an approximate 3-foot, compacted sand pad covered with timber mats as depicted in the project plans. The applicant is not proposing any mitigation.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2000-02888. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 25-1078-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202405935

Jennifer Jones

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: December 10, 2024

## Office of the Governor

### Notice of Available Funding Opportunities

Office of the Governor, Public Safety Office (PSO)

The Public Safety Office is announcing the following funding opportunities for State Fiscal Year 2026. Details for these opportunities, including the open and close date for the solicitation, can be found on the eGrants Calendar (<https://egrants.gov.texas.gov/fundingopp>).

· Body-Worn Camera Grant Program - The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with body-worn cameras.

· Bullet-Resistant Shield Grant Program - The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with bullet-resistant shields.

· County Solutions to Address Commercial Sexual Exploitation - The purpose of this funding opportunity is to support solution-driven projects from county governments to prevent, investigate, and prosecute commercial sexual exploitation in Texas. This solicitation is specific to county projects that are not specialty court programs.

- Crime Stoppers Assistance Fund - The purpose of this announcement is to solicit applications to strategically support, expand, and fund local certified Texas Crime Stoppers organizations that help protect our communities.
- Criminal Justice Grant Program - The purpose of this announcement is to solicit applications for projects that promote public safety, reduce crime, and improve the criminal justice system.
- District Attorney Testing of Forensic Evidence Grant Program - The purpose of this announcement is to solicit applications from district attorney offices for costs associated with the forensic analysis of physical evidence.
- First Responder Mental Health Program - The purpose of this program is to provide services and assistance directly to peace officers and first responders to address direct and indirect trauma that occurs in the course of their normal duties either as the result of the commission of crimes by other persons or in response to an emergency.
- General Victim Assistance Grant Program - The purpose of this program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process.
- Internet Crimes Against Children Grant Program - The purpose of this announcement is to solicit applications for projects that develop an effective response to technology-facilitated child sexual exploitation and Internet crimes against children that encompasses forensic and investigative components, training and technical assistance, victim services, and community education.
- Juvenile Justice & Truancy Prevention Grant Program - The purpose of this announcement is to solicit applications for projects that prevent violence in and around school; and to improve the juvenile justice system by providing mental health services, truancy prevention and intervention through community-based and school programs.
- Paul Coverdell Forensic Sciences Improvement Grant Program - The purpose of this announcement is to solicit applications for projects that improve the quality and timeliness of forensic science or medical examiners services as well as projects seeking to address emerging forensic science. Specific funding has been reserved for projects that support responses to the opioid epidemic.
- Project Safe Neighborhoods Grant Program - The purpose of this announcement is to solicit applications for projects that are designed to create and foster safer neighborhoods through a sustained reduction in violent crime, including, but not limited to, addressing criminal gangs and felonious possession and use of firearms.
- Regional Law Enforcement Training Academy Grant Program - The purpose of this announcement is to solicit applications for projects that provide quality, cost effective training for law enforcement and criminal justice officials through a regional model.
- Residential Substance Abuse Treatment Grant Program - The purpose of this announcement is to solicit applications to provide residential substance use disorder (SUD) treatment within local correctional and detention facilities.
- Rifle-Resistant Body Armor Grant Program - The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with rifle-resistant body armor.
- Sexual Assault Evidence Testing Grant Program - The purpose of this announcement is to solicit applications from law enforcement agencies for costs associated with the forensic analysis of physical evidence in relation to sexual assault or other sex offenses.
- Sexual Assault Forensic Exam (SAFE)-Ready Facilities Program - The purpose of this announcement is to solicit applications from hospital facilities seeking to achieve or maintain a Sexual Assault Forensic Exam (SAFE)-Ready designation, as well as non-profit corporations seeking to operate or maintain a SAFE Program as defined in Chapter 323 of the Texas Health and Safety Code.
- Specialized Advocacy for Commercially Sexually Exploited Youth - The purpose of this funding opportunity is to support Commercially Sexually Exploited Youth (CSEY) Advocacy programs. CSEY Advocacy programs provide individualized 24/7 crisis response, ongoing trust-based relational support, and case management for children and transition-age youth who are survivors of commercial sexual exploitation. For this solicitation, children are considered individuals 0-17 years of age and transition-age youth are individuals 18-24 years of age.
- Specialty Courts Grant Program - The purpose of this announcement is to solicit applications for specialty court programs as defined in Chapters 121 through 130 of the Texas Government Code as well as the continuation of a training and technical assistance resource center.
- State and Local Cybersecurity Grant Program: Governance and Planning Projects - The State and Local Cybersecurity Grant Program (SLCGP) supports cybersecurity efforts to address imminent cybersecurity threats to local information systems including implementing investments that support local governments with managing and reducing systemic cyber risk associated with the Governance and Planning SLGCP objective. This purpose of this objective is to develop and establish appropriate governance structures, including developing, implementing, or revising cybersecurity plans, to improve capabilities to respond to cybersecurity incidents and ensure continuity of operations.
- State and Local Cybersecurity Grant Program: Assessment and Evaluation Projects - The State and Local Cybersecurity Grant Program (SLCGP) supports cybersecurity efforts to address imminent cybersecurity threats to local information systems including implementing investments that support local governments with managing and reducing systemic cyber risk associated with the Assessment and Evaluation SLGCP objective. This purpose of this objective is to understand the current cybersecurity posture and areas for improvement based on continuous testing, evaluation, and structured assessments.
- State and Local Cybersecurity Grant Program: Mitigation - The State and Local Cybersecurity Grant Program (SLCGP) supports cybersecurity efforts to address imminent cybersecurity threats to local information systems including implementing investments that support local governments with managing and reducing systemic cyber risk associated with the Mitigation SLGCP objective. This purpose of this objective is to implement security protections commensurate with risk.
- State and Local Cybersecurity Grant Program: Workforce Development - The State and Local Cybersecurity Grant Program (SLCGP) supports cybersecurity efforts to address imminent cybersecurity threats to local information systems including implementing investments that support local governments with managing and reducing systemic cyber risk associated with the Workforce Development SLGCP objective. This purpose of this objective is to ensure organization personnel are appropriately trained in cybersecurity, commensurate with responsibility.
- State Crisis Intervention Grant Program - The purpose of this announcement is to solicit applications for projects that promote the prevention, intervention, and reduction of crime and violence and provide essential crisis services to at-risk populations within Texas communities.
- State Homeland Security Program: Competitive National Priority Area Projects (SHSP-NPA) - The purpose of this announcement is to solicit applications for projects that support state and local efforts to

prevent terrorism and targeted violence and prepare for the threats and hazards that pose the greatest risk to the security of Texas citizens. The Office of the Governor (OOG), Public Safety Office (PSO) provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving a secure and resilient state. Funding under this announcement will be awarded on a competitive basis for projects supporting FEMA designated SHSP National Priority Areas.

· State Homeland Security Program: LETPA Projects (SHSP-L) - The purpose of this announcement is to solicit applications for projects that support state and local efforts to prevent terrorism and targeted violence and prepare for the threats and hazards that pose the greatest risk to the security of Texas citizens. The Office of the Governor (OOG), Public Safety Office (PSO) provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving a secure and resilient state.

· State Homeland Security Program: Regular Projects (SHSP-R) - The purpose of this announcement is to solicit applications for projects that support state and local efforts to prevent terrorism and targeted violence and prepare for the threats and hazards that pose the greatest risk to the security of Texas citizens. The Office of the Governor (OOG), Public Safety Office (PSO) provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving a secure and resilient state.

· Texas Model for Care Coordination Grant Program - The purpose of this funding opportunity is to support programs to implement the Texas Model for Care Coordination for Commercially Sexually Exploited Youth (CSEY). The Care Coordination Model is a consensus-driven, collaborative approach to identify and recover CSEY, and to facilitate tailored, accessible, trauma-informed, and holistic resources through a coordinated network of providers. The target population is youth (0-17) with an option to serve transition-age youth (18-24), capacity permitting.

· Violence Against Women Justice and Training Program - The purpose of this announcement is to solicit applications for projects that promote a coordinated, multi-disciplinary approach to improve the justice system's response to violent crimes against women, including domestic violence, sexual assault, dating violence, and stalking.

TRD-202405889  
Angie Martin  
Director  
Office of the Governor  
Filed: December 4, 2024

## Texas Health and Human Services Commission

Public Notice: Texas State Plan Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 24-0033 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of the amendment is to update the State Plan to include Certified Family Partner (CFP) services. CFP services, also referred to as family partner support services or family peer support services, are an array of formal and informal supports that are provided to the parents (birth, adoptive and foster), legally authorized representatives (LARs) or primary caregivers of a Medicaid-eligible child or youth (20 years of age and younger) who is diagnosed with a mental health or substance use condition, as defined in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental

Disorders. A CFP is a parent (birth, adoptive or foster), LAR or primary caregiver with lived experience parenting or raising a child or youth with a mental or substance use condition, and who has received specialized training and passed a certification exam to provide the services. The proposed amendment is effective March 1, 2025.

A corresponding amendment (TN 25-0001) will also update the reimbursement methodology and/or the fee schedules in the current state plan by adjusting fees, rates, or charges for these services. The public notice of intent to submit a state plan amendment for the rates and updates to the fee schedules will be published in the *Texas Register*.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by e-mail at Medicaid\_Chip\_SPA\_Inquiries@hhsc.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

TRD-202405960  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: December 11, 2024

## Texas Department of Insurance

Company Licensing

Application for Catlin Insurance Company, Inc., a foreign fire and/or casualty company, to change its name to AXA XL Insurance Company Americas. The home office is in Wilmington, Delaware.

Application for Many Insurance Company, a foreign fire and/or casualty company, to change its name to American Guardian Shield Insurance Company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Andrew Guerrero, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202405963  
Justin Beam  
Chief Clerk  
Texas Department of Insurance  
Filed: December 11, 2024

## Texas Department of Licensing and Regulation

Notice of Vacancies on Code Enforcement Officers Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Code Enforcement Officers Advisory Committee (Committee) established by 16 Texas Administrative Code §62.65. The purpose of the Code Enforcement Officers Advisory Committee is to provide advice and recommendations to the Department on technical matters relevant to the administration of this chapter. **This announcement is for:**

- one registered code enforcement officer and
- one structural engineer or licensed architect.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the approval of the Commission. Members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. The Committee is composed of the following members:

- (1) five registered code enforcement officers;
- (2) one structural engineer or licensed architect;
- (3) two consumers, one of which must be a certified building official; and
- (4) one person involved in the education and training of code enforcement officers.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application via e-mail at [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

**This is not a paid position and there is no compensation or reimbursement for serving on the Committee.**

Issued in Austin, Texas this December 13, 2024.

TRD-202405890

Courtney Arbour

Executive Director

Texas Department of Licensing and Regulation

Filed: December 4, 2024



## Texas Lottery Commission

Scratch Ticket Game Number 2622 "LUCKY NO. 7"

### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2622 is "LUCKY NO. 7". The play style is "key number match".

### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2622 shall be \$2.00 per Scratch Ticket.

### 1.2 Definitions in Scratch Ticket Game No. 2622.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 7 SYMBOL, 77 SYMBOL, 777 SYMBOL, \$2.00, \$3.00, \$6.00, \$9.00, \$10.00, \$18.00, \$20.00, \$30.00, \$60.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2622 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
7 SYMBOL	WIN\$
77 SYMBOL	DBL
777 SYMBOL	TRP
\$2.00	TWO\$



\$3.00	THR\$
\$6.00	SIX\$
\$9.00	NIN\$
\$10.00	TEN\$
\$18.00	ETN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$60.00	SXTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2622), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2622-0000001-001.

H. Pack - A Pack of the "LUCKY NO. 7" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY NO. 7" Scratch Ticket Game No. 2622.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY NO. 7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of

the YOUR NUMBERS Play Symbols to either of the LUCKY NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "77" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "777" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$30,000 will each appear exactly one (1) time, except on Tickets winning ten (10) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use both LUCKY NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching LUCKY NUMBERS Play Symbols will appear on a Ticket.

I. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 02 and \$2, 03 and \$3, 06 and \$6, 09 and \$9, 10 and \$10, 18 and \$18 and 20 and \$20).

J. On all Tickets, a Prize Symbol will not appear more than one (1) time, except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "7" (WIN\$) Play Symbol will never appear more than one (1) time on a Ticket.

M. The "7" (WIN\$) Play Symbol will win the PRIZE for that Play Symbol.

N. The "7" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

O. The "7" (WIN\$) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

P. The "7" (WIN\$) Play Symbol will never appear on the same Ticket as the "77" (DBL) or "777" (TRP) Play Symbols.

Q. The "77" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

R. The "77" (DBL) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

S. The "77" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

T. The "77" (DBL) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

U. The "777" (TRP) Play Symbol will never appear more than one (1) time on a Ticket.

V. The "777" (TRP) Play Symbol will win TRIPLE the PRIZE for that Play Symbol and will win as per the prize structure.

W. The "777" (TRP) Play Symbol will never appear on a Non-Winning Ticket.

X. The "777" (TRP) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

Y. The "77" (DBL) and "777" (TRP) Play Symbols can appear together on the same Ticket as per the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY NO. 7" Scratch Ticket Game prize of \$2.00, \$3.00, \$6.00, \$9.00, \$10.00, \$18.00, \$20.00, \$30.00, \$60.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form

and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY NO. 7" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY NO. 7" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY NO. 7" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUCKY NO. 7" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2622. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2622 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	899,840	10.14
\$3.00	401,280	22.73
\$6.00	401,280	22.73
\$9.00	206,720	44.12
\$10.00	24,320	375.00
\$18.00	72,960	125.00
\$20.00	72,960	125.00
\$30.00	11,552	789.47
\$60.00	10,260	888.89
\$100	4,066	2,242.99
\$1,000	20	456,000.00
\$30,000	6	1,520,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2622 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2622, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405953

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 11, 2024



Scratch Ticket Game Number 2630 "COLOSSAL CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2630 is "COLOSSAL CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2630 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2630.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59,

STACK OF CASH SYMBOL, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$5,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2630 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX

57	FFSV
58	FFET
59	FFNI
STACK OF CASH SYMBOL	WINX10
\$20.00	TWY\$
\$30.00	TRTY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$5,000	FVTH
\$50,000	50TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2630), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2630-0000001-001.

H. Pack - A Pack of the "COLOSSAL CASH" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "COLOSSAL CASH" Scratch Ticket Game No. 2630.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set

forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "COLOSSAL CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-nine (69) Play Symbols. COLOSSAL CASH: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. BONUS: If the player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-nine (69) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;



7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-nine (69) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the sixty-nine (69) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the sixty-nine (69) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to thirty-two (32) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than four (4) times on a Ticket.

F. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

G. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "STACK OF CASH" (WINX10) Play Symbol will never appear in the WINNING NUMBERS or BONUS Play Symbol spots.

I. KEY NUMBER MATCH: The "STACK OF CASH" (WINX10) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 30 and \$30).

K. BONUS: Matching Prize Symbols will only appear in a winning BONUS play area as dictated by the prize structure.

L. BONUS: A Ticket will not have matching non-winning Prize Symbols across the four (4) BONUS play areas.

M. BONUS: Non-winning Prize Symbols will not be the same as winning Prize Symbols across the four (4) BONUS play areas.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "COLOSSAL CASH" Scratch Ticket Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COLOSSAL CASH" Scratch Ticket Game prize of \$5,000 or \$50,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim

is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COLOSSAL CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "COLOSSAL CASH" Scratch Ticket Game, the Texas Lottery shall deliver to

an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "COLOSSAL CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2630. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2630 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	600,000	10.00
\$30.00	360,000	16.67
\$40.00	180,000	33.33
\$50.00	300,000	20.00
\$100	240,000	25.00
\$200	70,000	85.71
\$500	8,000	750.00
\$5,000	100	60,000.00
\$50,000	50	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2630 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2630, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405954  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 11, 2024



**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transactions

**Grant of Utility Easement - Mitchell County**

**Approximately 15 Acres at Lake Colorado City State Park**

In a meeting on January 23, 2025, the Texas Parks and Wildlife Commission (the Commission) will consider modifications to an existing easement for utility line upgrades of approximately 15 acres at the Lake Colorado City State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [real.estate.comment@tpwd.texas.gov](mailto:real.estate.comment@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission.

**Grant of Shoreline Restoration Easement - Matagorda County**

**Approximately 1 Acre at Matagorda Peninsula Coastal Management Area**

In a meeting on January 23, 2025, the Texas Parks and Wildlife Commission (the Commission) will consider approving a grant of shoreline restoration easement for approximately 1 acre at the Matagorda Peninsula Coastal Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and

Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [real.estate.comment@tpwd.texas.gov](mailto:real.estate.comment@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission.

#### **Acquisition of Land - Burnet and Lampasas Counties**

##### **Approximately 1,100 Acres Near Colorado Bend State Park**

In a meeting on January 23, 2025, the Texas Parks and Wildlife Commission (the Commission) will consider approving an acquisition of land for approximately 1,100 acres near Colorado Bend State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [real.estate.comment@tpwd.texas.gov](mailto:real.estate.comment@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission.

#### **Acceptance of Donation of Land - Brewster County**

##### **Approximately 640 Acres at Black Gap Wildlife Management Area**

In a meeting on January 23, 2025, the Texas Parks and Wildlife Commission (the Commission) will consider approving an acceptance of donation of land for approximately 640 acres at Black Gap Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [real.estate.comment@tpwd.texas.gov](mailto:real.estate.comment@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission.

TRD-202405922

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: December 9, 2024



## **Public Utility Commission of Texas**

## **Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 3, 2024, to amend a designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of MSEC Communications, LLC dba Midsouth Fiber Internet to Amend Eligible Telecommunications Carrier Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Service, Docket Number 57377.

The Application: Midsouth Fiber requests that its ETC designation be amended for the limited purpose of offering lifeline service to qualified households.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than June 20, 2024, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 57377.

TRD-202405891

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: December 4, 2024



## **State Securities Board**

### **Correction of Error**

The State Securities Board (board) published proposed amendments and a new rule for Title 7, Chapter 115 and proposed amendments for Chapter 116 in the November 8, 2024, issue of the *Texas Register*. Due to an error by the Texas Register, the agency name for the board was omitted from the table of contents for the November 8, 2024, issue of the *Texas Register* (49 TexReg 8789) as well as from the start of the proposal for Chapter 115 (49 TexReg 8814). The agency name should have appeared before the chapter name "Securities Dealers and Agents".

TRD-202405925



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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