

# 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 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 416. MENTAL HEALTH COMMUNITY-BASED SERVICES

##### SUBCHAPTER C. JAIL-BASED COMPETENCY RESTORATION PROGRAM

###### 25 TAC §§416.76 - 416.93

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§416.76 - 416.93, concerning the standards for a Jail-based Competency Restoration Program (program). New §§416.76 and 416.78 - 416.92 are adopted with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4193). Section 416.77 and §416.93 are adopted without changes, and therefore, the sections will not be republished.

###### BACKGROUND AND PURPOSE

The new rules are necessary to comply with Senate Bill (SB) 1475, 83rd Legislative Session, Regular Session, 2013, which amended the Texas Code of Criminal Procedure, Article 46B.073 by adding subsection (e) and new Article 46B.090. The new legislation requires that the department contract with an entity to provide jail-based competency restoration services under a pilot program for two years for people with a mental health or a co-occurring psychiatric and substance use disorder, including competency education for adult men or women found incompetent to stand trial.

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

New §416.76 describes the purpose of the subchapter which is to outline standards and requirements for operating jail-based competency restoration services.

New §416.77 sets forth the subchapter's application to providers of jail-based competency restoration services.

New §416.78 sets forth the definitions that are used in the subchapter. Definitions include the terms "Co-occurring psychiatric and substance use disorder (COPSD)," "Community provider," "Competency restoration," "Competency restoration training module or training module," "DSHS," "DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist," "Incompetent to stand trial (IST)," "Inpatient forensic facility," "Jail-based competency restoration," "Legally authorized representative (LAR)," "Licensed practitioner of the healing arts (LPHA)," "Local behavioral health authority (LBHA)," "Local

mental health authority (LMHA)," "Managed care organization (MCO)," "Mental illness," "Peer Provider," "Provider," "Qualified mental health professional-community services (QMHP-CS)," "Specially trained security officer," "Sub-contractor," and "Texas Commission on Jail Standards."

New §416.79 sets forth the requirements for eligibility criteria to participate in the program.

New §416.80 sets forth standards for operating a program.

New §416.81 sets forth the requirements for program admission, assessment, and reassessment.

New §416.82 sets forth the requirements for written policies and procedures for the program.

New §416.83 sets forth the requirements for staff member training for the program.

New §416.84 sets forth the requirements for responsibilities of the LMHA, LBHA, or MCO in screening, continuity of care planning, and data reporting of services provided to participants in the program.

New §416.85 sets forth the requirements of treatment planning for participants in the program.

New §416.86 sets forth the requirements for program staffing of the program.

New §416.87 sets forth the requirements for rights afforded to participants in the program.

New §416.88 sets forth the requirements for competency restoration services provided in the program.

New §416.89 sets forth the requirements for using a DSHS-approved competency restoration module for the program.

New §416.90 sets forth the requirements for coordination of transitional services for participants' post-treatment in the program.

New §416.91 sets forth the requirements for participants' discharge planning post-treatment.

New §416.92 sets forth the requirements for compliance with statutes, rules, and other documents related to providing jail-based competency restoration services.

New §416.93 sets forth the requirements for collecting and reporting outcome measures associated with the program.

Additional changes made throughout the subchapter include various grammatical, punctuation, and formatting changes.

###### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commis-

sion has reviewed and accepts. The commenters were associations, and/or groups as follows. Texas Council of Community Centers (Texas Council), Disability Rights Texas (DRTx), The Council for Advising and Planning (CAP) for the Prevention and Treatment of Mental and Substance Use Disorders, MHMR of Tarrant County, Liberty HealthCare Corporation, Texas Commission on Jail Standards (TCJS), and Dallas County Department of Criminal Justice (Dallas County). The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of the comments.

Comment: DRTx was opposed to the rules and continues to be opposed to jail-based competency restoration in general because jails are not therapeutic environments.

Response: The commission appreciates the commenter's perspective that jails are not a therapeutic environment. However, the department believes that with properly trained clinical and jail staff, and adherence to these rules, standards and oversight, the program is a satisfactory alternative that benefits participants who would otherwise be incarcerated and at risk for decompensation while waiting for a bed in a state mental health facility. No change was made as result of the comment.

Comment: Liberty Healthcare Corporation and Dallas County responded with appreciation for the opportunity to provide comments on the proposed rules relating to jail-based competency restoration. Furthermore, the commenters expressed appreciation for the department's work on the program.

Response: The commission appreciates the commenter's diligence and effort in providing comments. No change was made as a result of these comments.

Comment: TCJS commented on the deviation from minimum jail standards and how it may compromise the security of the entire facility, create confusion among jail staff and participants, and create opportunities for the exploitation of program participants by county jail inmates.

Response: The commission acknowledges TCJS's concerns but disagrees with the comment. The department responds that the current standard related to the number of specially trained security officers that will be present per shift, as required in the rules, exceeds the current minimum jail standards ratio which is 1 jailer per 48 inmates. The rule requires 2 specially trained officers, across each shift, for an anticipated capacity of 20 participants (i.e., 2 specially trained officers per 20 participants). No changes were made as the result of this comment.

Comment: Concerning §416.76, Purpose, CAP believes the Purpose section should also address education about the repercussions of pleading guilty to charges. Additionally, the commenter suggested asking a staff attorney from DRTx to convene a committee of lawyers and essential stakeholders to draft language to address the consequences of pleading guilty to charges that would not constitute giving legal advice. The commenter further suggested that the draft language be submitted to the Texas Attorney General for an opinion to determine whether the draft language would in fact constitute legal advice.

Response: The commission disagrees with the comments. The department responds that consistent with the Texas Code of Criminal Procedure, Article 46B.090, the purpose of the subchapter is to address two major components with regard to competency restoration. First, to provide clinical treatment for co-occurring psychiatric and substance abuse disorders; and second,

to provide competency education to program participants in the Jail-Based Competency Restoration Program. Furthermore, the department responds that the program participant's attorney is the individual responsible for advising the participant of the consequences associated with the charges and the ramifications associated with pleading guilty. The department believes that the request is outside the scope of the authority set forth in the applicable statute and could be construed as program staff providing legal advice. Therefore, the department declines to add the commenter's suggested language. No change was made as a result of the comment.

Comment: Concerning §416.78(4), the definition of the term "competency restoration training module or training module," CAP requested clarification regarding the definition and who was being trained. The commenter recommended the following language, "Competency restoration training module or training module--The DSHS-approved training module used to train provider staff members who provide competency education during competency restoration."

Response: The commission agrees with the comment. The department responds that the provider is responsible for ensuring staff are properly trained and demonstrate competence in using the training module to provide legal education to participants. Additionally, the training module is distributed to and used by the participants. In response to the commenter's concerns, the department has revised the definition of "competency restoration training module or training module" to clarify that the training module is used as a competency restoration educational manual for participants in §416.78(4). The department has also added the requirement that provider staff be trained and demonstrate competency in the use of the training module to §416.83(b)(4), Staff Member Training.

Comment: Concerning §416.78(8), the definition of the term "inpatient forensic facility," CAP suggested being consistent in using the terms "state mental health facility" and "state hospital."

Response: The commission agrees with the commenter's observation and has replaced the term "state hospital" in §416.76, Purpose, with the term "state mental health facility." Also, a new definition of "state mental health facility" was added in §416.78(23).

Comment: Concerning §416.78(9), the definition of the term "jail based competency restoration," the Texas Council and MHMR of Tarrant County requested a definition of a "dedicated mental health unit" be added and asked "is it only one?" The commenters also offered that most jails have to separate male and female inmates. The commenters explained that inmates are separated due to many issues not limited to behavior, type of offense, gang affiliations, suicide risk, etc. and further expressed that larger counties do not have areas in the jails that could accommodate the requirements of this program.

Response: The commission agrees with the comments by adding the following definition as new paragraph (5), consistent with the Texas Code of Criminal Procedure, Article 46B.090(h)(2), "Dedicated mental health unit--A designated, separate space in the jail for the provider to conduct the program and where the participant is housed and receives competency restoration education." The department clarifies that a dedicated mental health unit would serve either adult men or adult women. While the department understands that each jail has a classification system for housing inmates, the aforementioned statute mandates that participants be housed in a designated, separate space and the department, based on the complex clinical needs

of the participants, supports the statutory requirement. Due to other issues not limited to behavior, the department believes it is paramount to the safety and welfare of participants and program staff to have two specially trained security officers on duty during each shift.

Comment: Concerning §416.80(a)(1), Program Standards, the Texas Council and MHMR of Tarrant County, requested the department to provide clarification as to who can be a provider and could LMHAs become a provider.

Response: The commission agrees with the comments. Consistent with the Texas Code of Criminal Procedure, Article 46B.090, the department responds by adding the following language in §416.80(a)(1)(B)(i) and (ii) to clarify the requirements for an LMHA to be considered as a provider for the program: "The provider must be an LMHA in good standing with the department and has a demonstrated history of successful jail-based competency restoration outcomes; or has demonstrated a history of successful competency restoration outcomes."

Comment: Concerning §416.80(a)(1), Program Standards, CAP, DRTx, Liberty HealthCare Corporation, and Dallas County requested clarification on whether the provider or the program services needed to be certified by a nationwide nonprofit organization.

Response: The commission agrees with the comments that clarification is needed. Consistent with the Texas Code of Criminal Procedure, Article 46B.090, the department responds by clarifying that it is the provider that must be certified rather than the program and has added the statement "a provider other than an LMHA must" to §416.80(a)(1)(A) to state "a provider other than an LMHA must be certified by a nationwide nonprofit organization that accredits health care organizations and programs and maintain this accreditation while under contract with DSHS to provide competency restoration services under this subchapter."

Comment: Concerning §416.80(a)(3), Program Standards, the Texas Council and MHMR of Tarrant County noted that the subsection appears to require that all jail staff receive training in the DSHS-approved protocol for preventing and managing aggressive behavior.

Response: The commission agrees with the comment. The department responds by replacing the term "jail staff" with the term "specially trained security officers" as defined in §416.78(22), Definitions, to clarify that only jail staff dedicated to the program must be trained in the DSHS-approved protocol for preventing and managing aggressive behavior in §416.80(b).

Comment: Concerning §416.80(a)(3), Program Standards, CAP requested that the DSHS-approved protocol for preventing and managing aggressive behavior also include a trauma informed approach. Regarding §416.80(b), the commenter also expressed that the examples provided in the subsection (i.e., Prevention and Management of Aggressive Behavior and Satori Alternatives to Managing Aggression) are not trauma informed and that a person managing an escalating situation could unknowingly produce more trauma. The commenter suggested the following language replace the language proposed in subsection (b), "The contractor shall ensure that the county jail require jail staff be trained and demonstrate competency in de-escalation, prevention and trauma informed protocols in managing aggressive behavior such as a DSHS-approved preventative de-escalation interventions strategies."

Response: The commission disagrees with the comments. Regarding subsection (a), the department acknowledges the importance of trauma informed approaches and interventions and further the department encourages the provider to seek evidence-based interventions for preventing and managing aggressive behaviors that include trauma informed approaches. The department declines to add the suggested language because it may have the effect of limiting the number of protocols available for use in preventing and managing aggressive behaviors.

Regarding subsection (b), the department declines to make the requested change because as noted in the response to subsection (a) using a trauma informed approach would limit the number of protocols available for the provider's consideration.

Comment: Concerning §416.81(a), Admission, Assessment, and Reassessment, DRTx and CAP requested adding the following language "persons determined to be eligible for the program shall be admitted to the program no later than 24 hours after the date of the order of commitment. If the Jail-based Competency Restoration Program is at capacity, the program must inform the court and ensure the defendant is immediately placed on the clearinghouse waitlist."

Response: The commission agrees with the commenters' suggestion and has added the language for the 24 hour timeframe for admission or placement on the clearinghouse waitlist in new subsection (b).

Comment: Concerning §416.82(1), Written Policies and Procedures, the Texas Council and MHMR of Tarrant County requested guidelines as to who is appropriate for admission to a state mental health facility for competency restoration versus a Jail-based Competency Restoration Program.

Response: The commission disagrees with the comments. Consistent with Health and Safety Code, Title 7, Chapter 574, Subchapter C, relating to Proceedings for Court-Ordered Mental Health Services, and 25 TAC, Chapter 404, Subchapter E, relating to Rights of Persons Receiving Mental Health Services the department responds that people receiving mental health services do so in the least restrictive environment. However, §416.79, Program Eligibility, the eligibility to participate in the program is determined by the court, based on a participant being incompetent to stand trial pursuant with Texas Code of Criminal Procedure, Article 46B. Before admittance to the Jail-Based Competency Restoration Program, a participant must first be screened and be determined ineligible for an outpatient competency restoration program. No changes were made as a result of these comments.

Comment: Concerning §416.82(1), Written Policies and Procedures, the Texas Council and MHMR of Tarrant County inquired as to "who is responsible for paying for medications for participants while in the program, who is responsible for non-psychiatric medical care, and who is liable for negative outcomes in the program?"

Response: The department responds that the provider would be ultimately responsible for the outcomes of the program, as well as payment for psychiatric medications and non-psychiatric medical care. While the Texas Code of Criminal Procedure, Article 46B.090(h)(3) and (4), requires the provider to enter into a contract with the participating county or counties (i.e., jail) and to contract with the jail to provide the same basic care to the participants as provided to other inmates of a jail (e.g., clinically appropriate psychoactive medications) the department believes the provider is responsible for payment of the items set forth in

Article 46B.090(h)(3) and (4). No changes were made as a result of these comments.

Comment: Concerning §416.82(1), Written Policies and Procedures, CAP expressed that the state forensic mental health facility should also be part of the process, especially around coordination and continuity of care if a person is deemed unlikely to be restored. The commenter recommended that in addition to the LMHA, LBHA or MCO that the state forensic mental health facility be added to the list of continuity of care planning entities.

Response: The commission agrees with the comment. The department responds that state mental health facilities should be involved in the coordination and continuity of care planning process and the term "state mental health facility" was already included in the list of continuity of care planning entities listed in §416.91, Discharge Planning.

Comment: Concerning §416.82(2), Written Policies and Procedures, the Texas Council and MHMR of Tarrant County expressed that having inmates housed in the same general housing area with varying issues such as suicidality/homicidality along with inmates puts those who would otherwise be eligible for general population at risk. Additionally, the commenters stated that most county jails do not have areas that could accommodate the requirements of this program.

Response: The commission disagrees with the comment. The department responds that this is consistent with the Texas Code of Criminal Procedure, Article 46B.090(h)(2), which requires the jail to designate a separate space in the jail for the provider to conduct the program. Furthermore, each participant would be screened upon program admission for the risk of suicide or homicide and would be placed on one to one observation in accordance with the standards set forth by the TCJS and the local jail's plan. The department acknowledges that the program would not be appropriate for every jail. In order to provide intensive clinical services and create a safe clinically appropriate treatment environment, consistent with a state mental health facility, services must be provided in a separate designated space. No changes were made as a result of the comments.

Comment: Concerning §416.82(8), Written Policies and Procedures, the Texas Council and MHMR of Tarrant County commented that the section was vague and asked for clarification regarding whether the proposed text relates to when a participant is restored to competency and waiting for the court's ruling that the participant has been restored? Further, the commenters asked if this was upon return from the state hospital or upon being restored to competency in the jail program and if this is a different mental health unit for participants who have been restored?

Response: The department responds by clarifying that this provision relates to the Jail-based Competency Restoration Program rather than competency restoration in a state mental health facility. Further, the department clarifies that a participant would remain in the program's dedicated mental health unit pending the court's disposition of the participant's criminal charges. However, if a jail has a mental health unit other than the dedicated program space, a participant may be transferred to the jail's mental health unit leaving an opening for another participant to begin the program. The department believes that in order to maintain a participant's competency status, it is imperative that a participant remain separate from the general population to prevent decompensation, provide ongoing, clinically appropriate treatment, and

ensure safety. No changes were made as a result of these comments.

Comment: Concerning §416.82(8), Written Policies and Procedures, TCJS requested that the paragraph be revised as follows "when participants are restored to competency and have pending criminal charges, the participant is placed in a cell according to the participant's classification in the TCJS approved classification plan." The commenter indicated that the jails develop a plan according to the TCJS's minimum standards for housing assignments that is submitted to and approved by TCJS. The commenter noted that the requirements set forth in this paragraph may not be consistent with the jail's plan and may result in confusion as to where the participant would be housed.

Response: The commission disagrees with the comment. The department declines to make the commenter's suggested revisions because the department believes that treatment must be fostered in a clinically appropriate environment. Furthermore, the department believes that in order to maintain a participant's competency status, it is imperative that a participant remain separate from the general population to prevent decompensation, provide ongoing mental health care, and ensure safety. No changes were made as a result of the comments.

Comment: Concerning §416.86(a), Program Staffing, DRTx commented that "it was agreed during the SB 1475 workgroup discussions that the provider would use a peer specialist unless they were unable to find one."

Response: The commission disagrees with the comment. The department responds that the language set forth in this subsection encourages the employment and use of peer providers and believes that the proposed language meets the spirit of the agreement and therefore, declines to make the suggested revision. No change was made as a result of the comment.

Comment: Concerning §416.86(c), Program Staffing, CAP and DRTx commented that "the average ratio over the three shifts is not consistent with the statute, which instead requires an "average ratio." Furthermore, CAP expressed "the average should be met on each shift to ensure adequate treatment for participants and the safety of participants and staff." CAP maintains that "specially trained jail guards are not program staff and that jail guards are not only unacceptable, but also dangerous and a real lost opportunity to work with people." CAP and DRTx reiterated that the program "must be similar to the clinical treatment provided in an inpatient mental health facility and provide weekly treatment hours commensurate with a state hospital." CAP and DRTx commented that "it is unclear therefore how the statutory mandates regarding similar treatment and commensurate treatment hours will be met with the proposed staffing requirements." DRTx commented that the average ratio should be met on each shift to ensure adequate treatment for participants and safety. Additionally, DRTx commented that the proposed ratios would only require the provider to staff appropriately during the day and are unacceptable. DRTx proposed that at a minimum, each shift should have an equal number of QMHPs as jail staff in addition to a Registered Nurse and on-call psychiatrist. Further, DRTx commented that the psychiatrist and jail staff should not be included in the 3.7 to 1 staffing average.

Response: The department responds that consistent with current jail-based competency restoration models operating in other states, the department has recommended that the Jail-based Competency Restoration Program operate 24 hours a day, seven days per week. Competency restoration services

will be provided Monday through Friday, 8:00 a.m. to 5:00 p.m., while medical services will continue to be provided during night and evening shifts. The Jail-based Competency Restoration Program is responsible for collaborating with jail staff to ensure the safety and welfare of participants 24 hours a day, seven days per week. No changes were made as the result of this comment.

Comment: Concerning §416.86(c), Program Staffing, the Texas Council, MHMR of Tarrant County commented that smaller jails and regions with limited licensed or credentialed staff would be unable to meet the rule requirements for staffing 24 hours a day, seven days per week.

Response: The department responds to this comment that it does not anticipate that the program would occur in a small jail. The program is designed to consider jails with higher demand and need for competency restoration services. No changes were made as a result of the comments.

Comment: Concerning §416.86(c), Program Staffing, the Texas Council and MHMR of Tarrant County asked for clarification regarding changes in staffing patterns for participants on suicide watch. Furthermore, the commenters noted that "1.0 Full Time Employee (FTE) Psychiatrist with a caseload of about 20 people does not appear to be an effective use of an expensive resource, considering that medication management is only one part of the competency restoration process. The entire staffing pattern appears to be very expensive."

Response: The department responds that the staffing pattern is a minimum standard and that the program must have the ability to increase that minimum standard to ensure a clinically appropriate, safe environment as necessary (e.g., when a participant is suicidal or homicidal). Further, regarding the commenters concerns about the psychiatrist's responsibilities, the department responds that consistent with the Texas Code of Criminal Procedure, Article 46B.090, not only is the psychiatrist required to provide appropriate psychoactive medication the psychiatrist must also conduct a minimum of two full psychiatric evaluations of each participant during the period that he or she receives competency restoration services in the jail. The departments note that the evaluations are time sensitive as the psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the participant is admitted to the program, and the psychiatrist must submit to the court a report concerning each evaluation. No changes were made as a result of these comments.

Comment: Concerning §416.86(c), Program Staffing, Liberty Healthcare Corporation and Dallas County requested clarification on the requirement for "two specially trained county jail security staff" during all shifts. According to the commenter's interpretation "the rule requires two officers dedicated to the program on all shifts which would require a total of 11 officers at a cost of almost \$600,000." Further, the commenters stated that "this additional staffing and expense is excessive and is far greater than the intended design of the program." The commenters expressed that the "additional level of proposed staffing is inconsistent with the legislative intent and funding for this pilot program."

The commenters offered the following "more effective" approach that would maximize the limited resources appropriated for this pilot program. The commenter suggested that one "specially trained county jail security staff is assigned to the program during daytime hours whenever program staff is required to be with

program participants. This would be significantly more productive and efficient rather than using the limited appropriation on unnecessary security staff."

Response: The commission disagrees with the comments. The department responds that the staffing pattern is a minimum standard and that the program must have two specially trained security officers present on all shifts. The department believes that it is imperative that two specially trained security officers be present during all shifts to ensure the safety of participants and staff. Additionally, the program is consistent with current jail-based competency restoration models operating in other states. The department believes that one security officer would not suffice for a program whose participants have intensive clinical needs. No changes were made as a result of these comments.

Comment: Concerning §416.86(c), Program Staffing, Liberty Healthcare Corporation, Dallas County, and TCJS suggested the following revisions to the subchapter. For each shift program staffing, the commenters recommended a decrease in the number of specially trained county jail security staff from two to one. The commenters noted the reduction in specially trained county jail staff is consistent with jail standards governing the monitoring of usual floor activities.

Response: The commission disagrees with the comments. The department responds that the staffing pattern is a minimum standard and that the program must have two specially trained security officers present on all shifts. The current standard related to the number of specially trained security officers that will be present per shift exceeds the current minimum jail standards ratio (i.e., 1 jailer per 48 inmates). The rule requires two specially trained officers, across each shift, for an anticipated capacity of 20 participants (i.e., 2 specially trained officers per 20 participants). The department believes that it is imperative that two specially trained security officers be present during all shifts to ensure the safety of participants and staff. Additionally, the program is designed to be consistent with current jail-based competency restoration models operating in other states. The department believes that one security officer would not suffice for a program whose participants have intensive clinical needs. No changes were made as the result of this comment.

Additionally, the program is designed to be with the interest of maximizing costs-savings associated with operating a Jail-based Competency Restoration Program, and consistent with current jail-based competency restoration models operating in other states. The department believes that one security officer would not suffice for a program whose participants have intensive clinical needs. No changes were made as the result of this comment.

Comment: Concerning §416.86(c), Program Staffing, Liberty Healthcare Corporation and Dallas County noted that the program was "based on a recommendation contained in the Legislative Budget Board's annual Government Effectiveness and Efficiency Report (GEER) and intended to provide the state with a "less expensive alternative" to the state mental health hospital system for providing competency restoration services." The commenters further stated that "While the goal of restoring the defendants to competency outlined in the legislation is consistent with the methods and treatments used at the state hospitals, the pilot was never intended to replicate a state hospital. Rather, the program is more akin to an outpatient treatment program where the defendants would "reside" during

non-treatment hours at the county jail instead of in the free world."

Response: The commission disagrees with the comments. The department responds that the Texas Code of Criminal Procedure, Article 46B.090(f)(2)(A)(ii), directed the department to implement a program that provided clinical treatment similar to that provided as part of a competency restoration program at an inpatient mental health facility. The program does not replicate a state hospital setting.

Concerning §416.88(a), Competency Restoration Services, CAP recommends the term "competency education" be replaced with the term "competency restoration education" consistent with other references in the rule text.

Response: The commission agrees with the comment. The department responds by replacing the term "competency education" with "competency restoration education."

Comment: Concerning §416.88(d), Competency Restoration Services, the Texas Council responded that "once again, for smaller urban communities, the requirement to have credentialed or licensed staff might present a challenge." Also, the Texas Council and MHMR of Tarrant County reiterated that "forced medication for an inmate in the program could imply behavior issues that could jeopardize the ability to safely house with other inmates in the program."

Response: The commission disagrees with the comments. Consistent with the department's previous response to a similar comment, the department does not anticipate that the program would occur in a small jail. The program is designed to consider jails with higher demand and need for competency restoration services. Furthermore, the department anticipates that the jails considered for this program would likely be in larger urban areas in which the pool of credentialed and licensed staff would be sufficient to meet the minimum program staffing requirements described in §416.86, Program Staffing.

Regarding the use of forced medication, the department responds that the program must ensure a clinically appropriate, safe environment for program participants. Therefore if, in the opinion of the psychiatrist, psychoactive medication is necessary for the participant to engage in competency restoration education and the participant refuses to consent to that medication, the provider is obligated to obtain a court order for the administration of psychoactive medications. The department believes that with appropriate and ongoing clinical engagement a participant would be active in his or her treatment and would decrease the need for court ordered medication. No changes were made as a result of these comments.

Comment: Concerning §416.91(c), Discharge Planning, the Texas Council and MHMR of Tarrant County commented that "1 FTE psychiatrist to perform only 2 evaluations in a 60 day period does not appear to be an effective use of an expensive resource."

Response: The commission disagrees with the comments. The department responds that consistent with the Texas Code of Criminal Procedure, Article 46B.090, the psychiatrist is not only required to provide two full psychiatric evaluations of each participant during the period that he or she receives competency restoration services in the jail, but is also required to provide appropriate psychoactive medication management. The department also notes that the evaluations are time sensitive as the psychiatrist must conduct one evaluation not later than the 21st

day and one evaluation not later than the 55th day after the date the participant is admitted to the program, and the psychiatrist must submit to the court a report concerning each evaluation. Furthermore, the psychiatrist would be working closely with the court to update the participant's competency status and be available to seek court ordered medications when necessary. No changes were made as a result of these comments.

Comment: Concerning §416.91(d), Discharge Planning, DRTx requested the following language be added, "If at any time during a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist for the provider determines that the defendant has attained competency to stand trial or determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future, the psychiatrist for the provider shall promptly issue and send to the court a report demonstrating that fact." The commenter maintains that under the law, the presence of one of these factors requires prompt notification to the court.

Response: The commission agrees with the commenter and has added language consistent with the Texas Code of Criminal Procedure, Articles 46B.090(j)(1) and 46B.090(k)(1). Further, the department has reformatted subsection (d) to clarify the two factors when the psychiatrist must notify the court regarding a participant's competency status.

Comment: Concerning §416.91(f)(1), Discharge Planning, the CAP requested clarification regarding the length of time for a "court ordered single extension." The commenter further stated that the Texas Code of Criminal Procedure allows for a single extension of 60 days and requested this language be added to the section.

Response: The commission responds that in accordance with the Texas Code of Criminal Procedure, Article 46B.080 "the court may enter an order extending the initial restoration period for an additional period of 60 days." The department agrees with CAP's recommendation and has added the suggested language allowing for a single 60 day extension to §416.90(b).

Comment: Concerning §416.93, Outcome Measures, CAP recommended adding another measure that would track the number of people who are put on the state forensic mental health facility waitlist on the 21st day to determine how many participants, by 21st day, would be not attain competency to stand trial."

Response: The commission disagrees with the comment. The department responds by stating that the program is required to collect data on an array of participant and administrative outcomes, including the number of participants who were not restored and who were transferred to a state mental health facility, as described in §416.93. Further, the department does not believe that the added measure suggested by the commenter would be of added benefit. No change was made as a result of this comment.

Comment: Concerning §416.93, Outcome Measures, DRTx agreed with the department's decision to collect data on the all reported abuse, neglect, and exploitation allegations, not just confirmed reports and emergency medication.

Response: The commission appreciates the commenter's favorable response regarding data collection. No change was made as a result of the comment.

Department Comments

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes.

Concerning §416.78(3), the word "court" was added to clarify the type of processing and the phrase "and charges" were added to state "the court proceedings and charges."

Concerning §416.78(18), the definition of "program staff member" was added for clarification regarding comments related to staffing in general. Also, in §416.83(b), the term "program" replaced the term "provider" for clarification to state "program staff members."

Concerning §416.78(20), the definition of "provider staff member" was added for clarification regarding comments related to staffing in general. In §416.83(a), the term "provider" was added to state "qualified provider staff members" and in §416.85, the term "staff members" was added to state "provider staff members" for consistency.

Concerning §416.78(21), the phrase "in accordance with §416.83(b) of this title (relating to Staff Member Training)" was added and the term "this subchapter" was deleted.

Concerning §416.80(b), the term "provider" replaced the term "contractor" and the term "specially trained security officers" replaced the term "jail staff."

Concerning §416.83(b)(1), §416.87, and §416.92(a)(5), the reference to "Exhibit A" was removed because the "Rights of Participants Receiving Jail-Based Competency Restoration Services" document is not considered rule text and will be available on the program's website at <http://www.dshs.state.tx.us/mhsa-rights/> or can be obtained by written request to the department's address provided in §416.87.

Concerning §416.86(c), the phrase "including specially trained security officers" was added for consistency.

Concerning §416.86(c)(1), the term "security officers shall" replaced the term "county jail staff will" for consistency. Also, in §416.86(c)(2) and (3), the terms "on site" and "security officers" were added, and the term "county jail security staff" was deleted for consistency.

Concerning §416.89, the title was changed from "Competency Restoration Module" to "Competency Restoration Training Module" for consistency.

Concerning §416.76, §416.78, §416.79, §416.81, §416.82, §416.83, §416.86, §416.87, and §416.92, the department made revisions to these sections to provide correct grammar, formatting and consistency, which improve the flow, accuracy and readability of the rules.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by

the department and for the administration of Health and Safety Code, Chapter 1001.

#### §416.76. Purpose.

The purpose of this subchapter is to provide standards, which are consistent with the state mental health facility standards for competency restoration for the Jail-based Competency Restoration Program (program), as required by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090, through Acts of the 83rd Texas Legislature, Regular Session, as Senate Bill 1475. The program shall include mental health and co-occurring psychiatric and substance use disorder (COPSD) treatment services, as well as competency education in the jail for adult men or adult women found incompetent to stand trial (IST), under Texas Code of Criminal Procedure, Chapter 46B.

#### §416.78. Definitions.

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

(1) Co-occurring psychiatric and substance disorder (COPSD)--The co-occurring diagnoses of psychiatric and substance use disorders.

(2) Community provider--Any person or legal entity that contracts with DSHS, an LMHA, LBHA, or MCO to provide mental health and substance disorder community services to individuals, including that part of an LMHA, LBHA, or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(3) Competency restoration--The treatment process for restoring one's ability to consult with his or her attorney with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings and charges against them.

(4) Competency restoration training module (training module)--The DSHS-approved training module to be used by provider staff members who provide competency education during competency restoration.

(5) Dedicated mental health unit--A designated, separate space in the jail for the provider to conduct the program and where the participant is housed and receives competency restoration education.

(6) DSHS--The Department of State Health Services.

(7) DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist--A forensic waiting list for persons committed to one of the state mental health hospitals under the Texas Code of Criminal Procedure, Chapter 46B as incompetent to stand trial (IST) or 46C not guilty by reason of insanity.

(8) Incompetent to stand trial (IST)--A person is incompetent to stand trial if the person does not have:

(A) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; and

(B) a rational as well as factual understanding of the proceedings against the person.

(9) Inpatient forensic facility--An entity that provides inpatient forensic mental health treatment such as a state mental health facility.

(10) Jail-based competency restoration--Competency restoration conducted in a county jail setting that is provided in a dedicated mental health unit.

(11) 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, who may be a parent, guardian, or managing conservator of a minor, the guardian of an adult, or the legal representative of a deceased individual.

(12) Licensed practitioner of the healing arts (LPHA)--A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker (formally a licensed master social worker-advanced clinical practitioner) as determined by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505;

(D) a psychologist;

(E) an advanced practice nurse recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist in psych/mental health or nurse practitioner in psych/mental health; or

(F) a licensed marriage and family therapist.

(13) Local behavioral health authority (LBHA)--An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(14) Local mental health authority (LMHA)--An entity designated as the local mental authority by DSHS in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority pursuant to Texas Health and Safety Code, §533.0356.

(15) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the DSHS.

(16) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, intellectual or developmental disorder, or autism) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(17) Peer provider--A staff member who:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(18) Program staff member--A person who employed or subcontracted by the jail-based competency restoration program to provide services. Included in program staff are specially trained security officers, all licensed and credentialed staff, and other individuals who are directly contracted or subcontracted to provide services to participants.

(19) Provider--A person or entity that contracts with the DSHS to provide jail-based competency restoration services.

(20) Provider staff member--A person who is employed or subcontracted with the provider for the provision of jail-based competency restoration services.

(21) Qualified mental health professional-community services (QMHP-CS)--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse; or

(C) completes an alternative credentialing process identified by the DSHS.

(22) Specially trained security officer--A county jailer that has obtained certification as a special officer for offenders with mental illness as provided through the Texas Commission on Law Enforcement, and has received staff member training in accordance with §416.83(b) of this title (relating to Staff Member Training).

(23) State mental health facility--A state hospital or a state center with an inpatient psychiatric component, including any hospital funded by or operated by DSHS.

(24) Sub-contractor--A person or entity that contracts with the provider of jail-based competency restoration services.

(25) Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state as established in 37 Texas Administrative Code (TAC) Part 9.

*§416.79. Program Eligibility.*

(a) To be eligible to participate in the program, participants shall be adult males or adult females who are determined by the court to be incompetent to stand trial (IST) pursuant to Texas Code of Criminal Procedure, Article 46B.

(b) Participants must be screened for outpatient competency restoration (OCR) by the LMHA, LBHA, or MCO and determined to be ineligible for those services before being admitted into the jail-based competency restoration program.

(c) Potential participants who are found to have an intellectual or developmental disability in the absence of any serious mental illness must be referred to the Local Intellectual and Developmental Authority through the LMHA, LBHA, or MCO for a decision regarding the appropriate services for these individuals.

(d) Evaluation for eligibility shall also include assessment and testing to include participant's current psychological functioning, and the likeliness to restore to competency.

*§416.80. Program Standards.*

(a) The program shall meet the standards set forth in Texas Code of Criminal Procedure, Article 46B.090(f), as may be amended, and:

(1) upon operation of program services:

(A) a provider other than an LMHA must be certified by a nationwide nonprofit organization that accredits health care organizations and programs and maintain this accreditation while under

contract with DSHS to provide competency restoration services under this subchapter; or

(B) the provider is an LMHA in good standing with DSHS; and

(i) has demonstrated a history of successful jail-based competency restoration outcomes; or

(ii) has demonstrated a history of successful competency restoration outcomes.

(2) use a non-punitive behavior management program; and

(3) use a DSHS-approved protocol for preventing and managing aggressive behavior.

(b) The provider shall ensure that the county jail requires specially trained security officers be trained and demonstrate competency in preventing and managing aggressive behavior such as the Prevention and Management of Aggressive Behavior, Satori Alternatives to Managing Aggression, or other approved preventative de-escalation intervention strategies.

(c) The provider shall through contract obligate sub-contractors to comply with the sections contained in this subchapter.

*§416.81. Admission, Assessment, and Reassessment.*

(a) Specific deficits in rational and factual understandings of legal proceedings and/or inability to consult with the person's lawyer with a reasonable degree of rational understanding that result in incompetence to stand trial, as detailed in Texas Code of Criminal Procedure, Chapter 46B, shall be assessed upon admission to the program. These specific deficits, as appropriate, shall be listed individually in the treatment plan and targeted specifically in the participant's treatment. The treatment team shall work to identify a participant strengths that may assist the participant in overcoming barriers to achieving a factual and rational understanding of legal proceedings and the ability to consult with his or her lawyer with a reasonable degree of rational understanding.

(b) If a potential participant is determined eligible for the program, he or she shall be admitted to the program not later than 24 hours after the date of the order of commitment. If the jail-based competency restoration program is at capacity, a program staff member must inform the court of such and ensure the potential participant's name is immediately placed on the clearinghouse waitlist.

(c) The treatment team shall review at minimum every two weeks the participant's progression towards attaining competency.

*§416.82. Written Policies and Procedures.*

The provider shall develop and implement written policies and procedures that:

(1) describe the eligibility, intake and assessment, and treatment planning processes and address coordination and continuity of care planning with the LMHA, LBHA, or MCO, beginning at admission. Any admission to the program requires a physician's confirmation of eligibility, an order of the court with jurisdiction over the participant, as well as cooperation and close coordination with the LMHA, LBHA, or MCO;

(2) assess participants for suicidality and homicidality and address any facility-based issues as well as address the degree of suicidality and homicidality by developing an individualized suicide and homicide prevention plan;

(3) outline the provider staff members' ability to monitor and report to the court a participant's restoration to competency status

and readiness for return to court as specified in Texas Code of Criminal Procedure, Article 46.B.079;

(4) by the 21st day, if it is determined that a participant is not likely to be restored by the 60th day, then the participant's name shall be added to the DSHS Statewide Forensic Clearinghouse Waitlist;

(5) track the maximum length of stay for a participant based on criminal charges. The expiration date of the competency restoration commitment shall be forwarded to the clearinghouse waitlist in the event that the participant is transferred to a state mental health facility;

(6) address how provider staff members ensure the ongoing care, treatment, and overall therapeutic environment during evenings and weekends including, but not limited to behavioral health crisis or physical health crisis consistent with §412.321(a) and (e) of this title (relating to Crisis Services);

(7) address how a participant's competency is maintained after restoration and before adjudication or transfer to a forensic hospital or discharge to the community. If a person is deemed not likely to restore and is awaiting transfer to a state mental health facility, then treatment in the program (except for competency education) shall continue until the transfer is complete; and

(8) if a participant is restored to competency he or she shall be placed in the mental health unit pending disposition of the criminal charges.

*§416.83. Staff Member Training.*

(a) The provider shall recruit, train, and maintain qualified provider staff members, with documented competency in accordance with Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services) and shall also comply with the following:

(1) §412.314(e) of this title (relating to Access to Mental Health Community Services);

(2) §412.315 of this title (relating to Medical Records System); and

(3) §412.316 of this title (relating to Competency and Credentialing).

(b) Before providing services, all program staff members shall be trained and demonstrate competence in:

(1) Rights of Participants Receiving Jail-Based Competency Restoration Services in §416.87 of this title (relating to Participant's Rights);

(2) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Texas Commission on Jail Standards; Department of Family and Protective Services, Adult Protective Services; or DSHS Office of Consumer Services and Rights Protection as set forth in applicable state laws and rules concerning abuse, neglect, and exploitation;

(3) using the protocol for preventing and managing aggressive behavior; and

(4) using the training module to provide legal education to participants.

*§416.84. LMHA, LBHA, or MCO Responsibilities.*

The LMHA, LBHA, or MCO is responsible for:

(1) screening participants who are determined by the court to be IST for OCR services prior to their admission to the program;

(2) participating in continuity of care planning for participants; and

(3) reporting encounters with participants in the DSHS-approved clinical records management system (e.g., Clinical Management of Behavioral Health Symptoms).

*§416.85. Treatment Planning.*

Based on a comprehensive assessment, provider staff members shall complete the treatment plan with the participant within five business days of a participant's admission to the program. Treatment planning shall include the participant and any family members or other members of a participant's natural support system. The treatments shall address the following needs as applicable:

- (1) trauma-informed care;
- (2) physical health concerns/issues;
- (3) medication and medication management;
- (4) level of family and community support;
- (5) mental health concerns or issues;
- (6) intellectual and developmental disabilities;
- (7) substance use disorder or COPSD concerns or issues;

and

(8) discharge plans developed in conjunction with the participant, LAR, and LMHA, LBHA, or MCO, as appropriate, in the event that participant is released to the community upon restoration.

*§416.86. Program Staffing.*

(a) The program coordinator shall be a licensed practitioner of the healing arts (LPHA), who shall also act as a liaison between the program and the courts. A multidisciplinary treatment team (team) is used to provide clinical treatment that is directed toward the specific objective of restoring the participant's competency to stand trial and is similar to the clinical treatment provided as part of a competency restoration program at a state mental health facility. The team shall include a psychiatrist, a registered nurse, a psychologist, and an LPHA, each of whom must be licensed by his or her respective Texas licensing board. The provider is encouraged to employ peer providers in addition to the program staff members required in subsection (b) of this section whenever possible.

(b) Program staff members shall be on-site 24 hours per day, seven days per week, which is consistent with a state mental health facility setting.

(c) Program staff members, including specially trained security officers shall be assigned to participants at an average ratio over the three shifts of not lower than 1 program staff member to 3.7 participants.

(1) Day shift program staffing shall include a minimum of a psychiatrist, a registered nurse, a half-time psychologist, and an LPHA. Two specially trained security officers shall be present as well.

(2) Evening shift program staffing shall include a registered nurse on site and a psychiatrist shall be available on call. Consistent with jail standards, two specially trained security officers shall be present as well.

(3) Night shift program staffing shall include a registered nurse on site and a psychiatrist shall be available on call. Consistent with jail standards, two specially trained security officers shall be present as well.

*§416.87. Participant's Rights.*

Although program participants are incarcerated while receiving program services, their rights are paramount. The provider shall comply with the Rights of Participants Receiving Jail-based Competency

Restoration Services, unless otherwise limited by the rules of the Texas Commission on Jail Standards. The Rights of Participants Receiving Jail-based Competency Restoration Services can be obtained by written request addressed to The Department of State Health Services, Mental Health and Substance Abuse Services, Texas Administrative Code (TAC) rules, P.O. Box 149347, Mail Code 2018-552, Austin, Texas 78714-9347, or by visiting <http://www.dshs.state.tx.us/mhsa-rights/>.

*§416.88. Competency Restoration Services.*

(a) Competency restoration services shall include the treatment of the underlying mental illness by a psychiatrist, and the provision of competency restoration education, rehabilitative skills training, case management, and counseling as clinically indicated for competency restoration.

(b) Provider staff members shall provide weekly treatment hours consistent with the treatment hours provided as part of a competency restoration program at a state mental health facility, including but not limited to 15 hours weekly, of rehabilitative services, skills training, substance use disorder treatment and counseling.

(c) The provider shall deliver competency restoration services that provide a full array of mental health and COPSD treatment services that are effective, responsive, individualized, culturally competent, trauma informed, and person-centered. Services shall include, but are not limited to:

- (1) psychiatric evaluation;
- (2) medications;
- (3) nursing services;
- (4) general medical care;
- (5) psychoactive medication, including court-ordered medication;
- (6) rehabilitative services, including skills training or psychosocial rehabilitation provided in accordance with the Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services);
- (7) competency restoration education; and
- (8) peer provider services, if available.

(d) The provider shall, when necessary, seek a court order for psychiatric medications in accordance with the Texas Health and Safety Code, §574.106 and Texas Code of Criminal Procedure, Chapter 46B.

*§416.89. Competency Restoration Training Module.*

(a) The provider shall use a DSHS-approved competency training module to provide legal education for each participant.

(b) Each participant shall be educated in multiple learning formats by multiple provider staff members, including but not limited to: discussion, reading, video and experiential methods such as role-playing, or mock trial. Participants with accommodation needs shall receive adapted materials and approach as needed.

*§416.90. Transition Services.*

(a) While waiting for his or her case to be resolved, provider staff members shall provide transition services in an effort to minimize the length of time a participant is in the program. Transition services shall be provided in a mental health unit, if a participant is:

- (1) restored to competency;
- (2) deemed not likely to restore and waiting for an inpatient forensic hospital bed; or

(3) deemed not likely to restore and awaiting return to the community.

(b) The court may order a single extension of 60 days under the Texas Code of Criminal Procedure, Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate state mental health facility or residential care facility as provided by the Texas Code of Criminal Procedure, Article 46B.073(d) for the remainder of the period under the extension.

*§416.91. Discharge Planning.*

(a) Upon discharge or transfer of a participant, the participant's medical record shall identify the services provided, diagnoses, treatment plan, medication and medication allergies and/or other known precautions.

(b) A reasonable and appropriate discharge plan developed in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge), shall be jointly developed by the provider staff, the participant, the LAR if available, the courts, the LMHA, LBHA, or MCO, state mental health facility, or other inpatient forensic facility. If applicable, discharge planning shall include, at a minimum, the following activities.

(1) If a participant is restored to competency and he or she is returning to the community or other provider (including jail), the provider shall:

(A) deliver counseling to prepare the participant and LAR, if any, for care after discharge or transfer;

(B) identify and recommend the clinical services and supports needed by the participant after discharge to the community or other provider, including jail;

(C) identify a community provider in collaboration with the participant and LAR to determine where the participant will be referred for any services or supports after discharge or transfer;

(D) prepare and forward to the LMHA, LBHA, MCO, or other provider (including jail) a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title; and

(E) provide seven days of psychoactive medication if a participant is being discharged to the community.

(2) If a participant is not restored to competency and is transferring to a state mental health facility or other inpatient forensic facility, the provider shall:

(A) notify the DSHS staff member responsible for maintaining the clearinghouse waitlist within 24 hours;

(B) deliver counseling to prepare the participant and LAR, if any, for care after transfer;

(C) identify and recommend the clinical services and supports needed by the participant after transfer; and

(D) prepare and forward to the state mental health facility or other inpatient forensic facility a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title.

(c) The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and

one evaluation not later than the 55th day after the date the defendant begins to participate in the program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection.

(d) If within 60 days of the participant's admission to the program, the psychiatrist for the provider makes a determination in accordance with paragraphs (1) or (2) of this subsection, the psychiatrist shall promptly notify, issue, and send to the court a report when a participant:

(1) has attained competency to stand trial; or

(2) is deemed not likely to attain competency within the foreseeable future.

(e) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a felony has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed:

(1) not likely to restore within the next five days, a provider staff member shall:

(A) contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(B) send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(C) ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

(2) If likely to restore within the next five days, the participant may remain in the program until the 60th day.

(f) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a misdemeanor has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed not likely to restore within the next five days:

(1) the court may order a single extension under Texas Code of Criminal Procedure, Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate state mental health facility or residential care facility as provided by the Texas Code of Criminal Procedure, Article 46B.073(d) for the remainder of the period under the extension:

(A) provider staff shall contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(B) provider staff shall send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(C) provider staff shall ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

(2) the court may proceed under Subchapter E or F of the Texas Code of Criminal Procedure, Article 46B; or

(3) the court may release the participant on bail as permitted under the Texas Code of Criminal Procedure, Chapter 17; or

(4) the court may dismiss the charges in accordance with the Texas Code of Criminal Procedure, Article 46B.010.

§416.92. *Compliance with Statutes, Rules, and Other Documents.*

(a) The provider shall comply with the following:

- (1) Texas Code of Criminal Procedure, Chapter 46B;
- (2) Texas Health and Safety Code, Chapter 574;
- (3) 25 TAC Part 1:

(A) Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(B) Chapter 411, Subchapter N (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(C) Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(D) Chapter 414, Subchapter K (relating to Criminal History and Registry Clearances);

(E) Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication);

(F) Chapter 415, Subchapter F (relating to Interventions in Mental Health Programs); and

(G) Chapter 417, Subchapter K (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(4) 37 TAC Part 9 (relating to Texas Commission on Jail Standards); and

(5) Rights of Participants Receiving Jail-based Competency Restoration Services in §416.87 of this title (relating to Participant's Rights).

(b) Concerning confidentiality, the provider shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including, but not limited to:

(1) 42 Code of Federal Regulations (CFR) Part 2 and Part 51, Subpart D;

(2) 45 CFR Parts 160 and 164, and §1386.22;

(3) Texas Health and Safety Code, Chapter 81, Subchapter F;

(4) Texas Health and Safety Code, Chapter 241, Subchapter G;

(5) Texas Health and Safety Code, Chapters 181, 595, and 611; and §533.009, §533.035(a), §572.004, §576.005, §576.007, and §614.017;

(6) Texas Government Code, Chapters 552 and 559, and §531.042;

(7) Texas Human Resources Code, Chapter 48;

(8) Texas Occupations Code, Chapter 159; and

(9) Texas Business and Commerce Code, §521.053.

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 18, 2015.

TRD-201505843

Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: June 26, 2015

For further information, please call: (512) 776-6972



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

###### 34 TAC §3.344

The Comptroller of Public Accounts adopts an amendment to §3.344, concerning telecommunications services, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7567). This section is amended to implement Senate Bill 140, 84th Legislature, 2015, which amended Tax Code, §151.316, subject to §151.1551, to exempt telecommunications services exclusively provided or used for the navigation of specified machinery and equipment exclusively used on a farm or ranch effective September 1, 2015.

Subsection (c) is amended to more accurately describe the content in the subsequent paragraphs includes nontaxable and exempt items. Paragraph (2) is amended to correct the name of §3.313.

Subsection (c)(7) is added to enumerate the exemption for telecommunications services exclusively provided or used for navigating machinery and equipment exclusively used on a farm or ranch. The purchaser must be an agricultural registrant and provide the seller with an agricultural exemption certificate.

The comptroller received written comments expressing support for the proposed amendment from Ned Meister, Director of Commodity and Regulatory Activities, the Texas Farm Bureau.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §151.1551 (Registration Number Required for Timber and Certain Agricultural Items) and §151.316 (Agricultural Items).

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 21, 2015.

TRD-201505847



## PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

### CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

#### 34 TAC §103.1

The Board of Trustees of the Texas County and District Retirement System (the Board) adopts amendments to 34 TAC §103.1, Calculations or Types of Benefits, with non-substantive changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7575). The text of the rule will be republished.

The amendments will implement new annuity purchase rates that are based on updated actuarial tables. The amendments will keep retirement costs in line with life expectancy, keep employers from experiencing cost creep due to improving life expectancy, and strengthen the retirement system. Application of the new rates will not impact retirees or any member benefits earned before January 1, 2018.

To ensure that benefits already earned are not affected and to minimize impact on members, any benefits earned before January 1, 2018, will use the current annuity purchase rates to calculate benefits. The current annuity purchase rates also apply to future interest on those pre-2018 benefits. The updated annuity purchase rates will only apply to benefits earned on or after January 1, 2018, and annuity purchase rates will be based on the member's and beneficiaries' attained ages in years and months.

Subsection (a) is amended to provide that service and retirement benefits in which the first benefit payment is payable before January 1, 2018 will be calculated under the existing annuity purchase rates. Subsection (a)(2) is amended to provide that the annuity purchase rate will be based on the respective retiree's and beneficiary's attained age in years.

Amended subsection (b) applies to benefits payable after January 1, 2018. Subsection (b)(1) provides the benefit that is associated with service credit that accrued before January 1, 2018 will be calculated using the existing annuity purchase rates. Subsection (b)(2) provides that the portion of the benefit that is associated with service credit that accrues on or after January 1, 2018 will be calculated using the new annuity purchase rates that are determined on a generational mortality basis using the RP-2000 Combined Mortality Table, with a one-year set forward for males and no set forward for females, projected to 2014 using Scale AA and for projections after 2014 using 110% of MP-2014 Ultimate Projection Scale, with a 32.79% reserve refund assumption for the standard benefit. The Board added the one-year set forward for males and no set forward for females based on the recommendation of the Board's actuary in order to more completely specify the mortality assumption. Mortality assumptions for these calculations are blended 50% male and 50% female

for retirees, and blended 30% male and 70% female for beneficiaries. Subsection (b)(3) provides that the annuity purchase rates are based on the respective retiree's and beneficiary's attained ages in years and months. Subsection (b)(4) provides that service credit means monetary credits as defined in Section 841.001(16) of the Texas Government Code.

Subsection (c) is repealed as it is duplicative of existing law.

The Board received no public written comments regarding the adoption of the rule.

The amendments are adopted under the authority of Government Code §841.001 and §845.110, which authorize the Board to adopt rates and tables, including a mortality basis to be used in determining actuarial equivalents.

#### §103.1. Actuarial Tables.

(a) Service retirement benefits and disability retirement benefits for which the first benefit payment is payable before January 1, 2018, shall be calculated under the following rules:

(1) The annuity purchase rate is calculated on the basis of the UP-1984 table with an age setback of five years for retirees and an age setback of 10 years for beneficiaries, with a 30% reserve refund assumption for the standard benefit.

(2) Annuity purchase rates are based on the respective retiree's and beneficiary's attained ages in years.

(b) For benefits payable on or after January 1, 2018, service retirement benefits and disability retirement benefits shall be calculated under the following rules:

(1) The annuity purchase rate for the portion of the benefit that is associated with service credit that accrued before January 1, 2018, and all future interest earned and employer matching attributable to this portion shall be calculated based on the assumptions described in subsection (a)(1) of this section.

(2) The annuity purchase rate for the portion of the benefit that is associated with service credit that accrues on or after January 1, 2018 and is not included in amounts described in (b)(1) above shall be calculated on a generational mortality basis using the RP-2000 Combined Mortality Table, with a one-year set forward for males and no set forward for female, projected to 2014 using Scale AA and for projections after 2014 using 110% of MP-2014 Ultimate Projection Scale, with a 32.79% reserve refund assumption for the standard benefit. Mortality assumptions for these calculations are blended 50% male and 50% female for retirees, and blended 30% male and 70% female for beneficiaries.

(3) The annuity purchase rates are based on the respective retiree's and beneficiary's attained age in years and months regardless of when the service credit was accrued.

(4) For purposes of this rule, service credit means the monetary credits allowed a member for service for a participating employer as defined in Section 841.001(16) of the Texas Government Code.

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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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

##### SUBCHAPTER I. FEES FOR COPIES OF RECORDS

###### 37 TAC §1.129

The Texas Department of Public Safety (the department) adopts amendments to §1.129, concerning Fees for Sale of Motor Vehicle Crash Reports in Highway Patrol Field Offices. This section is adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6287) and will not be republished.

These amendments are intended to implement the requirements of House Bill 2633, enacted by the 84th Texas Legislature. The amendments include criteria for obtaining a redacted or un-redacted copy of the crash report from highway patrol field offices. The amendment also reflects minor changes that revise or remove obsolete language.

No comments were received regarding the adoption of these amendments.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §550.065.

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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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



##### SUBCHAPTER J. AIRCRAFT OPERATIONS

###### 37 TAC §1.143

The Texas Department of Public Safety (the department) adopts amendments to §1.143, concerning Use of Unmanned Aircraft by a Law Enforcement Authority. This section is adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6288) and will not be republished.

These amendments are necessary to update the rule with new guidance from the Federal Aviation Administration regarding public aircraft operations.

No comments were received regarding the adoption of these amendments.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §423.007 which authorizes the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas.

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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D. Phillip Adkins  
General Counsel  
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For further information, please call: (512) 424-5848



##### SUBCHAPTER R. ACCOUNTING PROCEDURES

###### 37 TAC §1.231

The Texas Department of Public Safety (the department) adopts the repeal of §1.231, concerning Procedures for Vendor Protests of Procurements. This section is adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6289) and will not be republished.

The repeal of §1.231 is filed simultaneously with the adoption of new §1.264. These adoptions reorganize and update the rules governing contracting, placing all rules related to contracts in one location.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §2155.076, which requires the department to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

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 U. CONTRACTING

### 37 TAC §§1.262 - 1.264

The Texas Department of Public Safety (the department) adopts new §§1.262 - 1.264, concerning Contracting. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6289) and will not be republished.

Senate Bill 20 of the 84th Legislative Session added new Government Code, §2261.253 which requires state agencies to establish by rule procedures to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. The department has determined that such rules would enhance contract management policies and that new rules should be implemented.

Specifically, new §1.262 relates to contract monitoring by the contract review board. This new rule explains the procedure for identifying contracts requiring enhanced contract or performance monitoring.

New §1.263 relates to contract monitoring program risk assessment. The new rule articulates the criteria for identifying contracting risks.

This adoption adds §1.264, concerning procedures for vendor protests of procurements, to this newly named subchapter, placing all contract related rules within one subchapter. Additionally, it clarifies the procedure for appealing a determination by including the department's deputy director in the review procedure and makes non-substantive updates to the rule language.

No comments were received regarding the adoption of these sections.

The new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2155.076, which requires the department to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues; §2261.202, which requires state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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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## CHAPTER 3. TEXAS HIGHWAY PATROL

### SUBCHAPTER J. PROTECTION OF STATE BUILDINGS AND GROUNDS

#### 37 TAC §3.146

The Texas Department of Public Safety (the department) adopts the repeal of §3.146, concerning Prohibited Weapons. This section is adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6291) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this section and determined the reason for initially adopting this section continues to exist. The repeal of this section is filed simultaneously with the adoption of new §8.7. New §8.7 removes the word "concealed" pursuant to House Bill 910, enacted by the 84th Texas Legislature.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d) which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; §411.062(g) which authorizes the Public Safety Commission to authorize the department director to impose measures the director determines to be necessary to protect the safety and security of persons and property within the Capitol Complex; and §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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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## CHAPTER 8. CAPITOL COMPLEX

### SUBCHAPTER A. PROTECTION OF STATE BUILDINGS AND GROUNDS

#### 37 TAC §8.7

The Texas Department of Public Safety (the department) adopts new §8.7, concerning Prohibited Weapons. This section is adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6292) and will not be republished.

This new section is filed simultaneously with the repeal of §3.146. This section was reviewed pursuant to Government Code, §2001.039. During this review, the department determined the reason for initially adopting this section continues to exist. Additionally, this adoption removes the word "concealed" pursuant to House Bill 910, enacted by the 84th Texas Legislature.

No comments were received regarding the adoption of this section.

This new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d) which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; §411.062(g) which authorizes the Public Safety Commission to authorize the department director to impose measures the director determines to be necessary to protect the safety and security of persons and property within the Capitol Complex; and §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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 B. UNMANNED AERIAL VEHICLES

#### 37 TAC §8.21, §8.22

The Texas Department of Public Safety (the department) adopts new §8.21 and §8.22, concerning Unmanned Aerial Vehicles. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6293) and will not be republished.

The new rules are intended to implement the requirements of House Bill 3628, enacted by the 84th Texas Legislature, which details the limited use of authorized unmanned aircraft in the Capitol Complex.

No comments were received regarding the adoption of these sections.

The new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and §411.062(d-1), which authorizes the director to adopt rules governing the use of unmanned aircraft in the Capitol Complex.

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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## CHAPTER 12. COMPASSIONATE-USE/LOW-THC CANNABIS PROGRAM

### SUBCHAPTER A. GENERAL PROVISIONS

#### 37 TAC §§12.1 - 12.8

The Texas Department of Public Safety (the department) adopts new §§12.1 - 12.8, concerning General Provisions. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6294) and will not be republished.

This new Subchapter A is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis not later than September 1, 2017 and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter A provides definitions, requirements and standards generally applicable to those licensed or registered under the provisions of the bill.

The department accepted comment on the proposed rules through October 19, 2015. Written comments were submitted during this period by Rocco Iannapallo; Jennifer Holland, of Foodhandlerclasses.com; Rolando Legaretta; Leslie McAhren, Executive Director of CG Corrigan, Inc.; and Adam Socki.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence

or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: <http://dps.texas.gov/rsd/CUP/>.

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.1, Definitions, Mr. Socki suggests the department provide clearer definitions of the terms "production" and "cultivation."

RESPONSE: The proposed rules do not currently define these terms. They are statutory terms affecting the scope of criminal prohibitions against possession of marijuana and are not properly defined by administrative rule. Mr. Socki does not propose any definitions, and does not explain why definitions are necessary. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.2, Requirements and Standards, Mr. Iannapollo asks that the department provide guidance on what information is to be included in a licensee's recall notice to recipients of the licensee's product. Similarly, Ms. McAhren suggests the process should be "spelled out even further."

RESPONSE: The proposed rule currently requires licensees have a plan for recalling their products and for notifying anyone to whom the product has been distributed or sold that the product is being recalled. At this time, prior to implementation of the program, it is not apparent that further details are necessary or appropriate. This may change as the program develops. Neither Mr. Iannapollo nor Ms. McAhren provide any specific suggestions for how this rule can be improved. The department disagrees with the comments and will not be modifying the proposal.

COMMENT: Also relating to proposed §12.2, Requirements and Standards, Ms. McAhren asks that the department add language to subsection (b) of §12.2 to require the surrender of the terminated employee's identification.

RESPONSE: It is not clear whether the comment is referring to the department issued registration card or an employer issued identification card. The department issued cards need not be surrendered upon termination of employment. As to employer issued cards, licensees are not required to issue employee identification cards under the rules as proposed. However, should the licensee choose to do so, the manner in which such cards are returned is within the discretion of the licensee. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: In the context of her above comment, Ms. McAhren also recommends the issuance of an identification card to "everyone who works for the program in the state."

RESPONSE: The department will be issuing photo identification cards to all registrants. The department does not believe this comment requires any modification to the proposal.

COMMENT: Jennifer Holland suggests the rules require "some sort of training or course so that the employee has knowledge of their job duties and requirements." As Ms. Holland does not direct this comment to a specific rule, the department will address it in the context of §12.2, Requirements and Standards.

RESPONSE: Training of employees is a matter within the responsibility and discretion of the employing licensee. As Ms. Holland offers no training recommendations or reasons for them

the department believes the current requirements are sufficient and will not be modifying the proposal.

COMMENT: Relating to proposed §12.4, Records, Mr. Iannapollo asks the department clarify whether the requirement under proposed §12.4(b)(2) to maintain records of sales is satisfied by a summary or whether the records must be detailed.

RESPONSE: The proposed rule addresses the retention requirements of licensees' sales records; it does not address the form those records take. The types of sales records a licensee maintains will be determined by several factors, including other rules, local or state regulations, and primarily by the licensee's business practices. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Also relating to proposed §12.4, Records, Ms. McAhren suggests the requirement under proposed §12.4(a) to maintain records for two years may be insufficient.

RESPONSE: Ms. McAhren does not explain why the proposed two year retention policy is insufficient, but merely indicates some (unidentified) records may need to be kept permanently. For purposes of the administration of the program, the department believes two years is a sufficient record retention period. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.4, Records, Mr. Iannapollo also asks whether the reference to "raw materials" proposed §12.4(b)(3)(B), relating to transportation records, includes business supplies.

RESPONSE: The proposed rule relates to records on "raw materials used in...the production or cultivation of low-THC cannabis." The department does not interpret the term "raw material" in this context to include business supplies. The department will not be modifying the proposal.

COMMENT: Relating to proposed §12.4, Records, Mr. Legarreta notes that the use of the term "sativa" in subsection (b)(3)(B) inappropriately limits the application of the rule to one variety of cannabis, excluding Indica and Hybrid varieties.

RESPONSE: The rule language mirrors the statutory language and requires the maintenance of records on the transportation of the variety of cannabis plant authorized for use in the processing of low-THC cannabis. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.4, Records, Mr. Iannapollo asks that the department clarify whether the requirement under proposed §12.4(b)(2) to maintain records of sales is satisfied by a summary or whether the records must be detailed.

RESPONSE: The proposed rule addresses the retention requirements of licensees' sales records; it does not address the form those records take. The types of sales records a licensee maintains will be determined by several factors, including local or state regulations, and primarily by the licensee's business practices. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.5, Address on File, Ms. McAhren states "the information needs to be stored in accordance with HIPAA patient privacy and stored on an off-server (closed circuit) computer."

RESPONSE: The proposed rule requires licensees and their registered employees maintain their current addresses on file

with the department; the rule does not implicate patient records. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.7, Testing, Production, and Packaging, Ms. McAhren indicates "testing semi-annually and only testing 1% of the total production may be too infrequent."

RESPONSE: The comment appears to address an earlier draft of the rule previously published on the department's website. The proposed rule does not reflect such requirements; rather, the rule incorporates various testing related state and federal standards. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.8, Inventory Control System, Mr. Iannapollo asks for further detail in how the licensee's inventory control system is to interact with the department's centralized registry system.

RESPONSE: The manner in which the computer systems interact is a technical issue not appropriately addressed by these administrative rules. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Also relating to proposed §12.8, Inventory Control System, Mr. Iannapollo asks for the specific requirements relating to audit reports.

RESPONSE: The contents of an audit report are generally implied by the inventory control requirements provided in the proposed rule, and will otherwise be dependent on the specific circumstances surrounding the discovery of a discrepancy. At this time, prior to implementation of the program, it is not apparent that further details are necessary or appropriate. This may change as the program develops. The department disagrees with the comment and will not be modifying the proposal.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER B. APPLICATION AND RENEWAL

### 37 TAC §§12.11 - 12.16

The Texas Department of Public Safety (the department) adopts new §§12.11 - 12.16, concerning Application and Renewal. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6298) and will not be republished.

This new Subchapter B is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis not later than September 1, 2017 and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter B provides application and renewal requirements for licensure and registration under the provisions of the bill, including the application fees, as well as provisions for the denial of applications.

The department accepted comment on the proposed rules through October 19, 2015. Written comments were submitted during this period by Rocco Iannapollo; and Leslie McAhren, Executive Director of CG Corrigan, Inc.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: <http://dps.texas.gov/rsd/CUP/>.

The rule substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.11, Application for License, Ms. McAhren asks several questions relating to product testing, the prohibition of particular substances or contaminants, and the disposal of waste water. She also recommends the rules require a fire department occupancy certificate and that vehicles have a secure lock box.

RESPONSE: The comments appear to address an earlier version of the rule previously published on the department's website. The currently proposed rules address these issues. Testing requirements are addressed in proposed §12.7, which incorporates various testing related state and federal standards. Contaminants are also addressed in proposed §12.2(o). Fire regulations and local regulations generally are addressed in §12.2(m). Waste water is addressed in §12.2(n). And vehicle security, including the requirement of a lock box, is addressed in proposed §12.32. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Also relating to proposed §12.11, Application for License, Ms. McAhren asks for greater specificity in the rule requiring a method of screening and monitoring employees. She suggests the rule require an annual FBI background check, as an example.

RESPONSE: The manner in which a licensee screens and monitors its employees is a business decision within the discretion of the licensee. The standard applied by the department to such decisions is whether the licensee is successful in preventing diversion or theft. As to an FBI background check, licensees are not legally authorized to obtain FBI background checks. The de-

partment disagrees with the comment and will not be modifying the proposal.

COMMENT: Also relating to proposed §12.11, Application for License, Ms. McAhren suggests the rules should prohibit cannabis production and retail facilities within one thousand feet of schools, churches, daycares, or playgrounds. Ms. McAhren cites to the federal Controlled Substances Act and related regulations, as they relate to drug free school zones, as authority for this proposal.

RESPONSE: The federal and the Texas state laws governing drug free school zones do not create offenses; they are enhancement provisions establishing additional criminal penalties for the commission of certain drug related crimes within the specified zone. SB 339 exempts licensees from the offenses of delivery and of possession of marijuana (Tex. Health & Safety Code §481.120 and §481.121, respectively) under certain circumstances, generally when the delivery or possession is regulated under the bill. Therefore the enhancement provisions of §481.134 would not apply to these offenses committed by a licensee in the course and scope of regulated functions. For this reason an administrative rule prohibiting the licensee from operating within a certain distance of a school could not be supported by reference to the existing laws on drug free school zones, and is not clear that such a rule would be authorized under the current statute. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: In the context of her comment on proposed §12.11's provisions on an applicant's financial ability to support its operations, Ms. McAhren suggests changes to the application fee as provided in proposed §12.14. She recommends lowering the fees for the first three years in order to "lower the barrier to entry."

RESPONSE: SB 339 requires the application fee be sufficient to cover the costs associated with administering the program. It is not within the discretion of the department to modify the fees in the manner proposed. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Ms. McAhren recommends the addition to proposed §12.13 of an annual financial audit to the list of required items at renewal.

RESPONSE: Proposed §12.13(b) specifically requires a department inspection prior to approval of the renewal application. The inspection includes the verification of all items listed in proposed §12.11 for an original application, including certain financial records. Ms. McAhren provides no recommended items for her proposed financial audit. The department believes the requirements of proposed §12.11 are sufficient. At this time, prior to implementation of the program, it is not apparent that further requirements are necessary or appropriate. This may change as the program develops. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Also relating to proposed §12.11, Application for License, Mr. Iannapollo comments on subsection (b)(6)(C)(xii), relating to recall procedures. The rule requires an applicant have "recall procedures for any product that has a reasonable probability of causing adverse health consequences based on a testing result, patient reaction, or other reason." Mr. Iannapollo states that "patient reaction or other reason" is "really broad."

RESPONSE: The purpose of the rule is to require recall procedures when the licensee determines there is a possibility of an

adverse health consequence. This purpose would not be served by limiting the manner in which the licensee can make such a determination. The department disagrees with the comment and will not be modifying the proposal.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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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D. Phillip Adkins

General Counsel

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## SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

### 37 TAC §§12.21 - 12.25

The Texas Department of Public Safety (the department) adopts new §§12.21 - 12.25, concerning Compliance and Enforcement. Section 12.23 is adopted with changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6301) and will be republished. The department is correcting a grammatical error and changing wording in §12.23(d) from "A individual" to "An individual". Sections 12.21, 12.22, 12.24 and 12.25 are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6301) and will not be republished.

This new Subchapter C is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis not later than September 1, 2017 and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter C provides compliance and enforcement standards, including inspection standards provisions for the suspension and revocation of licenses and registrations.

The department accepted comment on the proposed rules through October 19, 2015. Written comments were submitted during this period by Leslie McAhren, Executive Director of CG Corrigan, Inc.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments.

These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: <http://dps.texas.gov/rsd/CUP/>.

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.21, Inspections, Ms. McAhren recommends the inclusion of the following additional language: "...at any time during normal business hours and with 24 hours' notice and without notice if issues of impropriety are suspected."

RESPONSE: The current proposal provides for entry by the department "at any time during regular business hours." A requirement of prior notice would not serve the department's mission of ensuring compliance. The department disagrees with the comment and will not be modifying the proposal.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

#### §12.23. Revocation.

(a) The department may revoke a license or registration if the licensee or registrant:

- (1) Is found to have performed a regulated function prior to issuance of the license or registration;
- (2) Misrepresents a material fact in any application to the department or any other information filed pursuant to the Act or this chapter;
- (3) Prepares or submits to the department false, incorrect, incomplete or misleading forms or reports on multiple occasions;
- (4) Performs a regulated function while suspended;
- (5) Exhibits a pattern of misconduct evidenced by previous violations for which previous suspensions have been inadequate to affect compliance;
- (6) Is convicted of a disqualifying felony or misdemeanor offense pursuant to §12.3 of this title (relating to Criminal History Disqualifiers);
- (7) Violates §§481.120, 481.121, 481.122, or 481.125 of the Texas Health and Safety Code; or
- (8) Submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Following notification of the violation, the licensee will be provided with thirty (30) days to address the violation or request a hearing by submitting the request electronically through the department's website or as otherwise determined by the department. If a hearing is requested, the department will schedule a hearing before SOAH.

(c) Except as provided in subsection (b) of this section, an individual whose certificate of registration has been revoked may not be relicensed or reregistered earlier than two (2) years from the date of revocation.

(d) An individual whose registration has been revoked for a dishonored or reversed payment, as provided under subsection (a)(8) of this section may reapply at any time. Approval of the application is

contingent upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment.

(e) Other than as provided in subsection (d) of this section, an individual whose license or registration has been revoked for a dishonored or reversed payment must follow the applicable procedures pursuant to §12.11 or §12.12 of this title (relating to Application for License and Application for Registration, respectively) for new applications.

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 21, 2015.

TRD-201505869

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. SECURITY

### 37 TAC §§12.31 - 12.34

The Texas Department of Public Safety (the department) adopts new §§12.31 - 12.34, concerning Security. These sections are adopted without changes to the proposed text as published in the September 18, 2015 issue of the *Texas Register* (40 TexReg 6303) and will not be republished.

The proposed new Subchapter D is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis not later than September 1, 2017 and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter D provides standards relating to the security of licensee's facilities and vehicles.

The department accepted comment on the proposed rules through October 19, 2015. Written comments were submitted during this period by Leslie McAhren, Executive Director of CG Corrigan, Inc.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: <http://dps.texas.gov/rsd/CUP/>

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.31, Security of Facilities, Ms. McAhren suggests the rules expressly require security cameras with a digital video recorder, and a maintenance log.

RESPONSE: The proposed rule requires the licensee maintain effective controls and procedures in order to prevent unauthorized access, theft, or diversion. While the satisfaction of this standard may in certain circumstances require security cameras, the department believes the licensee is best situated to evaluate the risks and determine the type and level of security appropriate for the facilities. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.33, Response to Security Breach, Ms. McAhren recommends the rule require licensees obtain property loss insurance.

RESPONSE: SB 339 provides no express authority for such a requirement. Moreover, such a requirement would impose a cost on all licensees that may not be necessary for all. The need for such insurance is properly left within the discretion of the licensee. The department disagrees with the comment and will not be modifying the proposal.

This proposal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER E. COMPASSIONATE-USE REGISTRY

### 37 TAC §§12.41 - 12.44

The Texas Department of Public Safety (the department) adopts new §§12.41 - 12.44, concerning Compassionate-Use Registry. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6305) and will not be republished.

This new Subchapter E is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis not later than September 1, 2017 and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter E provides guidelines for access to and registration in the Compassionate-Use Registry.

The department accepted comment on the proposed rules through October 19, 2015. Written comments were submitted during this period by Johnna Carlson, on behalf of Texas Children's Hospital; and Rolando Legaretta.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: <http://dps.texas.gov/rsd/CUP/>.

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.43, Prescriber Registration, Mr. Legaretta states: "Physicians cannot prescribe cannabis products; they can recommend; but not prescribe." The department interprets this statement as a recommendation to change the proposed rule references from 'prescription' to 'recommendation.'

RESPONSE: 'Prescription,' and 'prescribing,' are statutory terms that appear throughout SB 339. The bill contemplates the issuance of prescriptions authorizing the patient to obtain low-THC cannabis. Modification of this scheme would require legislative action and is not within the authority of the department to affect by administrative rule. Moreover, attempting to do so could also have implications for the exemptions from the criminal offense provisions of the Health and Safety Code, Chapter 481 relating to possession of marijuana. The application of the exemption requires a prescription issued under the provisions of SB 339. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Ms. Carlson raises a concern about a potential statutory conflict between SB 339's provisions and certain provisions of the Family Code. Specifically, she is concerned that the Family Code's provisions relating to the reporting of child abuse may require medical professionals to report a child's use of low-THC cannabis. See Texas Family Code, §261.101. Ms. Carlson asks that the department provide clarification of this issue in the proposed rules, and suggests proposed §12.44 as the appropriate section for such clarification.

RESPONSE: The reconciliation of this alleged statutory conflict is not appropriately addressed by the department's administrative rules. The department disagrees with the comment and will not be modifying the proposal.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848

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**SUBCHAPTER F. SPECIAL CONDITIONS FOR  
MILITARY SERVICE MEMBERS AND SPOUSES**

**37 TAC §§12.51 - 12.55**

The Texas Department of Public Safety (the department) adopts new §§12.51 - 12.55, concerning Special Conditions for Military Service Members and Spouses. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6306) and will not be republished.

This new Subchapter F is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organization of low-THC cannabis and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter F provides special licensing conditions for certain military service members and their spouses, and is intended to comply with the requirements of Texas Occupations Code, Chapter 55, as amended by Senate Bill 1307, 84th Legislative Session.

No comments were received regarding the adoption of these sections.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848

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**CHAPTER 35. PRIVATE SECURITY**

**SUBCHAPTER O. MILITARY SERVICE  
MEMBERS, MILITARY VETERANS, AND  
MILITARY SPOUSES - SPECIAL CONDITIONS**

**37 TAC §§35.181 - 35.183, 35.185**

The Texas Department of Public Safety (the department) adopts amendments to §§35.181 - 35.183 and new §35.185, concerning Military Service Members, Military Veterans, and Military Spouses - Special Conditions. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6307) and will not be republished.

These amendments and new section are required by Senate Bill 1307, 84th Legislative Session. The bill amends Chapter 55 of the Occupations Code and addresses special application and licensing provisions for military service members and military spouses applying for occupational licenses.

No comments were received regarding the adoption of these sections.

These sections are adopted pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter.

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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**CHAPTER 36. METALS REGISTRATION**

**37 TAC §§36.1 - 36.24**

The Texas Department of Public Safety (the department) adopts the repeal of §§36.1 - 36.24, concerning Metals Registration. These repeals are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6308) and will not be republished.

The repeal of §§36.1 - 36.24 is filed simultaneously with adoption of new §§36.1 - 36.4, 36.11 - 36.18, 36.31 - 36.37, 36.41 - 36.44 and 36.51 - 36.60. New Chapter 36 is intended to reorganize and update the rules governing the metals program, improve the clarity, and update the rules to reflect all recent legislative changes.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which

allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

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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TRD-201505874  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## CHAPTER 36. METALS RECYCLING ENTITIES

### SUBCHAPTER A. GENERAL PROVISIONS

#### 37 TAC §§36.1 - 36.4

The Texas Department of Public Safety (the department) adopts new §§36.1 - 36.4, concerning General Provisions. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6309) and will not be republished.

New Subchapter A is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of these sections.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

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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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848

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## SUBCHAPTER B. CERTIFICATE OF REGISTRATION

#### 37 TAC §§36.11 - 36.18

The Texas Department of Public Safety (the department) adopts new §§36.11 - 36.18, concerning Certificate of Registration. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6310) and will not be republished.

New Subchapter B is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of these sections.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

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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TRD-201505876  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

#### 37 TAC §§36.31 - 36.37

The Texas Department of Public Safety (the department) adopts new §§36.31 - 36.37, concerning Practice by Certificate Holders and Reporting Requirements. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6312) and will not be republished.

New Subchapter C is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules. The new sections also are intended to implement the requirements of House Bill 2187, enacted by the 84th Texas Legislature. The bill requires changes in payment methods and the use of a cash transaction card. The new sub-

chapter reflects such changes as well as minor changes adopted for the purposes of clarification.

No comments were received regarding the adoption of these sections.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. MILITARY EXEMPTIONS

### 37 TAC §§36.41 - 36.44

The Texas Department of Public Safety (the department) adopts new §§36.41 - 36.44, concerning Military Exemptions. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6314) and will not be republished.

New Subchapter D is intended to implement the requirements of Senate Bill 1307, enacted by the 84th Texas Legislature. The bill requires the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses. The new subchapter reflects such changes as well as minor changes proposed for the purposes of clarification.

No comments were received regarding the adoption of these sections.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

### 37 TAC §§36.51 - 36.60

The Texas Department of Public Safety (the department) adopts new §§36.51 - 36.60, concerning Disciplinary Procedures and Administrative Procedures. These sections are adopted without changes to the proposed text as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6315) and will not be republished.

New Subchapter E is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules. The new sections are also intended to implement the requirements of House Bill 2187, enacted by the 84th Texas Legislature. The bill allows for the imposition of administrative penalties in addition to other administrative actions. The new subchapter reflects such changes as well as minor changes proposed for the purposes of clarification.

No comments were received regarding the adoption of these sections.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act, and Texas Occupations Code, §1956.041, as amended by House Bill 2187, 84th Legislative Session, effective September 1, 2015, which authorizes the commission to impose administrative penalties for certain violations of the Act.

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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TRD-201505879

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

**CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES**

**SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT**

**40 TAC §108.813**

The Texas Health and Human Services Commission (HHSC) on behalf of the Department of Assistive and Rehabilitative Services (DARS) adopts an amendment to §108.813, concerning Determination of Hearing and Auditory Status, without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6574) and, therefore, the section will not be republished.

**BACKGROUND AND JUSTIFICATION**

At the October 2014 Council meeting, DARS Early Childhood Intervention (ECI) proposed various rule amendments, repeals of rules, and new rules related to its four-year statutory rule review for Chapter 108, ECI. Words that DARS had originally proposed for deletion in §108.813(a) were inadvertently published and eventually adopted. At the July 2015 DARS Council, DARS presented its intent to proceed with this rule proposal packet to correct the error.

While no consumer services or program operations were affected by this error, DARS believes the error needed to be corrected. The correction restores clarity to the rule and provides the public and agency staff with understandable text in §108.813(a), as it appears in DARS Chapter 108, Subchapter H.

**SECTION-BY-SECTION SUMMARY**

Section 108.813(a), Determination of Hearing and Auditory Status, currently reads as follows:

"As part of evaluation the interdisciplinary team must determine any need for further hearing assessment. This determination is completed by reviewing the current hearing and auditory status

for every child through an analysis of evaluation protocol results. A screening tool may be used for a or other screening tool if the child who is eligible based on a medical diagnosis or vision impairment."

DARS will remove the italicized words in the last sentence of this paragraph with this adoption:

"A screening tool may be used for a *or other screening tool if the* child who is eligible based on a medical diagnosis or vision impairment."

The correction of the sentence will read as intended:

"A screening tool may be used for a child who is eligible based on a medical diagnosis or vision impairment."

**COMMENTS:**

DARS did not receive any comments regarding the proposed section during the comment period.

**STATUTORY AUTHORITY**

The adopted amendment is authorized under the Texas Human Resources Code, Chapter 111, §111.051, Chapter 73, and Chapter 117. The amendment is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this 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.

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TRD-201505848  
Sylvia F. Hardman  
General Counsel  
Department of Assistive and Rehabilitative Services  
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Proposal publication date: September 25, 2015  
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