

---

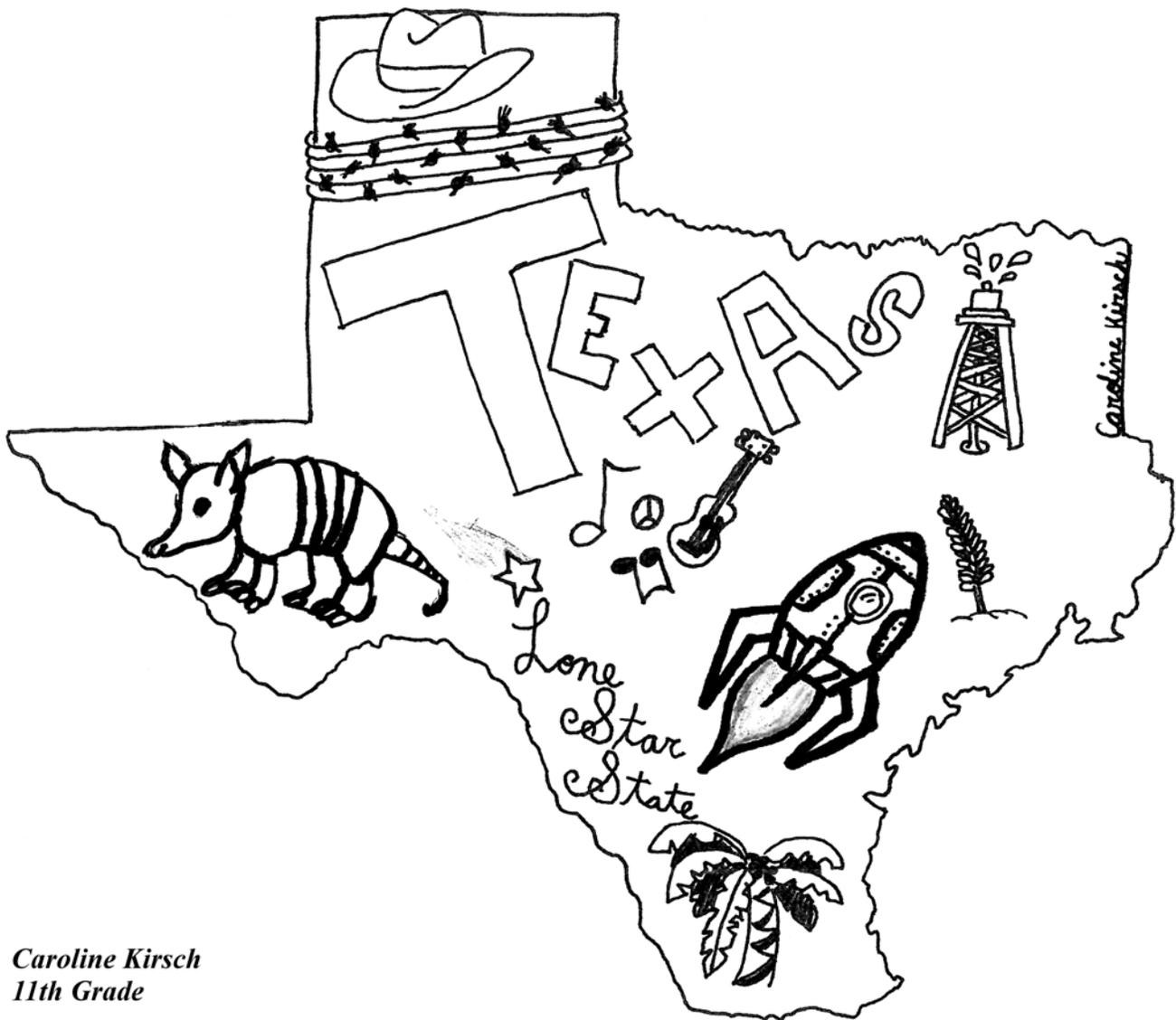
# TEXAS REGISTER

Volume 41 Number 2

January 8, 2016

Pages 349 -

---



Caroline Kirsch  
11th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$259.00 (\$382.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, TX 78711  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

**Secretary of State –**  
Carlos H. Cascos

**Director –** Robert Sumners

**Staff**

Leti Benavides  
Dana Blanton  
Audrey Bradshaw  
Deana Lackey  
Jill S. Ledbetter  
Michelle Miner  
Joy L. Morgan  
Barbara Strickland  
Tami Washburn

# IN THIS ISSUE

## **ATTORNEY GENERAL**

Requests for Opinions.....	355
Requests for Opinions.....	355
Opinions.....	356

## **PROPOSED RULES**

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

#### REIMBURSEMENT RATES

1 TAC §355.456.....	359
---------------------	-----

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

#### SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

16 TAC §111.1, §111.2.....	366
16 TAC §§111.10 - 111.14.....	367
16 TAC §§111.20 - 111.23.....	368
16 TAC §§111.30, 111.35 - 111.37.....	368
16 TAC §§111.40, 111.45 - 111.47.....	370
16 TAC §§111.50, 111.55 - 111.57.....	373
16 TAC §§111.60, 111.65, 111.66.....	377
16 TAC §§111.70, 111.75 - 111.77.....	379
16 TAC §§111.80, 111.85 - 111.87.....	380
16 TAC §§111.90, 111.95 - 111.97.....	382
16 TAC §§111.100, 111.105, 111.106.....	385
16 TAC §§111.110, 111.115 - 111.117.....	386
16 TAC §§111.130 - 111.132.....	387
16 TAC §111.140.....	388
16 TAC §§111.150 - 111.155.....	389
16 TAC §111.160.....	391
16 TAC §111.170, §111.171.....	392
16 TAC §§111.180 - 111.183.....	392
16 TAC §§111.190 - 111.192.....	393
16 TAC §§111.200 - 111.202.....	393
16 TAC §§111.210 - 111.215.....	394
16 TAC §111.220.....	396
16 TAC §§111.230 - 111.232.....	397

#### HEARING INSTRUMENT FITTERS AND DISPENSERS

16 TAC §112.1, §112.2.....	401
16 TAC §§112.10 - 112.14.....	402
16 TAC §§112.20 - 112.26.....	403

16 TAC §§112.30 - 112.33.....	404
16 TAC §§112.40 - 112.44.....	406
16 TAC §§112.50 - 112.53.....	407
16 TAC §112.60, §112.61.....	409
16 TAC §§112.70 - 112.72.....	409
16 TAC §112.80.....	411
16 TAC §§112.90 - 112.98.....	411
16 TAC §112.110.....	413
16 TAC §112.120.....	413
16 TAC §§112.130 - 112.134.....	414
16 TAC §112.140.....	414
16 TAC §112.150.....	415

#### ORTHOTICS AND PROSTHETICS

16 TAC §§114.1, 114.10, 114.20 - 114.30, 114.40, 114.50, 114.65 - 114.70, 114.80, 114.90, 114.95.....	417
---	-----

### **EMPLOYEES RETIREMENT SYSTEM OF TEXAS**

#### TERMS AND PHRASES

34 TAC §61.1.....	432
-------------------	-----

#### BOARD OF TRUSTEES

34 TAC §§63.1, 63.3, 63.4.....	433
--------------------------------	-----

#### EXECUTIVE DIRECTOR

34 TAC §§65.3, 65.11, 65.13.....	434
----------------------------------	-----

#### FLEXIBLE BENEFITS

34 TAC §§85.1, 85.4, 85.7, 85.9, 85.13.....	436
---	-----

### **TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### SCHOOL BUS SAFETY STANDARDS

37 TAC §14.12, §14.14.....	441
37 TAC §14.52.....	443

#### DRIVER LICENSE RULES

37 TAC §15.7.....	444
37 TAC §15.23.....	445
37 TAC §15.23.....	445
37 TAC §15.42.....	446
37 TAC §15.55.....	448
37 TAC §15.63.....	449
37 TAC §§15.91 - 15.93.....	450

### **DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### INTELLECTUAL DISABILITY SERVICES-MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

40 TAC §9.218.....	451
40 TAC §9.218.....	452
CONSUMER MANAGED PERSONAL ATTENDANT SERVICES	
40 TAC §44.102.....	454
40 TAC §44.202.....	455
40 TAC §44.301.....	456
COMMUNITY CARE FOR AGED AND DISABLED	
40 TAC §§48.1301 - 48.1303 .....	459
40 TAC §§48.2301 - 48.2305 .....	461
40 TAC §48.2701.....	461
40 TAC §48.2702.....	463
40 TAC §48.2702.....	463
40 TAC §§48.2907, 48.2910, 48.2915.....	463
40 TAC §48.2931.....	465
40 TAC §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084 - 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108 - 48.6110, 48.6112, 48.6114.....	465
INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS	
40 TAC §90.3.....	467
40 TAC §90.44.....	470
40 TAC §90.239.....	470
40 TAC §90.239.....	471
<b>WITHDRAWN RULES</b>	
<b>OFFICE OF THE SECRETARY OF STATE</b>	
HUMAN TRAFFICKING PREVENTION BUSINESS PARTNERSHIP	
1 TAC §§90.1 - 90.5 .....	473
<b>ADOPTED RULES</b>	
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	
MENTAL HEALTH COMMUNITY-BASED SERVICES	
25 TAC §§416.76 - 416.93 .....	475
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
TAX ADMINISTRATION	
34 TAC §3.344.....	486

<b>TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM</b>	
CALCULATIONS OR TYPES OF BENEFITS	
34 TAC §103.1.....	487
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>	
ORGANIZATION AND ADMINISTRATION	
37 TAC §1.129.....	488
37 TAC §1.143.....	488
37 TAC §1.231.....	488
37 TAC §§1.262 - 1.264 .....	489
TEXAS HIGHWAY PATROL	
37 TAC §3.146.....	489
CAPITOL COMPLEX	
37 TAC §8.7.....	490
37 TAC §8.21, §8.22.....	490
COMPASSIONATE-USE/LOW-THC CANNABIS PROGRAM	
37 TAC §§12.1 - 12.8 .....	490
37 TAC §§12.11 - 12.16.....	492
37 TAC §§12.21 - 12.25 .....	493
37 TAC §§12.31 - 12.34 .....	494
37 TAC §§12.41 - 12.44 .....	495
37 TAC §§12.51 - 12.55 .....	496
PRIVATE SECURITY	
37 TAC §§35.181 - 35.183, 35.185 .....	496
METALS REGISTRATION	
37 TAC §§36.1 - 36.24 .....	496
METALS RECYCLING ENTITIES	
37 TAC §§36.1 - 36.4 .....	497
37 TAC §§36.11 - 36.18.....	497
37 TAC §§36.31 - 36.37 .....	497
37 TAC §§36.41 - 36.44 .....	498
37 TAC §§36.51 - 36.60 .....	498
<b>DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES</b>	
DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES	
40 TAC §108.813.....	499
<b>TABLES AND GRAPHICS</b>	
.....	501
<b>IN ADDITION</b>	

**Cancer Prevention and Research Institute of Texas**

Request for Applications C-16-RELCO-2.....523  
Request for Applications C-16-TEXCO-2.....523

**Comptroller of Public Accounts**

Notice of Request for Proposals .....523  
Notice of Request for Proposals .....524

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings.....524  
Notice of Rate Ceilings.....524

**Employees Retirement System of Texas**

Request for Proposal to Provide Group Vision Care Services.....524

**Texas Commission on Environmental Quality**

Agreed Orders.....525  
Notice of Public Meeting for TPDES Permit for Municipal Wastewater  
Renewal Permit Number WQ0010889001 .....528  
Request for Nominations - Water Utility Operator Licensing Advisory  
Committee.....529

**Department of Family and Protective Services**

Notice of Consultant Contract Continuation.....529

**Texas Health and Human Services Commission**

Notice of Public Hearing on Proposed Medicaid Payment Rates for  
Supported Employment and Employment Assistance Services for the  
Youth Empowerment Services (YES) Waiver Program .....530  
Public Notice: STAR Kids Client Information Session.....530  
Public Notice: STAR Kids Client Information Session.....531  
Public Notice: STAR Kids Client Information Session.....531

**Texas Department of Housing and Community Affairs**

Notice of Funding Availability for the 2016-2017 Texas Bootstrap Loan  
Program.....532  
Notice of Funding Availability for the 2016-2017 Amy Young Barrier  
Removal Program .....532

**Legislative Budget Board**

Request for Proposal .....532

**Texas Lottery Commission**

Scratch Ticket Game Number 1782 "Crazy Cash" .....533  
Scratch Ticket Number 1793 "Weekly Grand" .....538

**North Central Texas Council of Governments**

Transit Management Services - Request for Proposals .....542

**Public Utility Commission of Texas**

Announcement of Application for Amendment to a State-Issued Cer-  
tificate of Franchise Authority .....543  
Notice of Application for Amendment to a Service Provider Certificate  
of Operating Authority.....543  
Notice of Application for Approval of Accelerated Depreciation  
Rate.....543  
Notice of Application for Sale, Transfer, or Merger.....543  
Notice of Application to Discontinue Service Provider Certificate of  
Operating Authority .....544  
Notice of Intent to Serve Decertified Area .....544  
Notice of Intent to Serve Decertified Area .....544

**Texas State Soil and Water Conservation Board**

USDA-Natural Resources Conservation Service - State Technical Ad-  
visory Committee Meeting .....544

# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

**RQ-0082-KP**

**Requestor:**

The Honorable Jane Nelson  
Chair, Committee on Finance  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Re: Whether a school district, municipality, or county may reduce or repeal the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year (RQ-0082-KP)

**Briefs requested by January 15, 2016**

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

TRD-201505883  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: December 21, 2015



Requests for Opinions

**RQ-0083-KP**

**Requestor:**

The Honorable Dan Flynn  
Chair, Committee on Pensions  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

**Briefs requested by January 15, 2016**

**RQ-0084-KP**

**Requestor:**

The Honorable James Keffer  
Chair, Committee on Natural Resources  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a rental property owner's use of an online payment option that is accompanied by a convenience fee involves the imposition of a credit card surcharge in violation of state law (RQ-0084-KP)

**Briefs requested by January 22, 2016**

**RQ-0085-KP**

**Requestor:**

Mr. Michael Williams  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: Application of section 39.112 of the Education Code to a board of managers in specific circumstances (RQ-0085-KP)

**Briefs requested by January 22, 2016**

**RQ-0086-KP**

**Requestor:**

Mr. Michael Williams  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: The legal status of real property described by section 12.128 of the Education Code that is returned to the state from a charter school (RQ-0086-KP)

**Briefs requested by January 22, 2016**

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

TRD-201505983

Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: December 29, 2015



Opinions

**Opinion No. KP-0047**

The Honorable Allison Palmer  
51st Judicial District Attorney  
124 West Beauregard  
San Angelo, Texas 76903-5850

Re: The extent to which firearms may be excluded from buildings that contain courts, offices utilized by the courts, and other county officials (RQ-0040-GA)

**S U M M A R Y**

For purposes of section 411.209 of the Government Code, the phrase "premises of any government court" used in Penal Code subsection 46.03(a)(3) generally means either (1) a structure utilized by a court created by the Texas Constitution or the Legislature, or (2) a portion of such a structure. The premises of a "government court or office utilized by the court" means a government courtroom or those offices essential to the operation of the government court. The responsible authority that would notify license holders of their inability to carry on the respective premises must make the determination of which government courtrooms and offices are essential to the operation of the government court, in consultation with the government court.

**Opinion No. KP-0048**

The Honorable Glenn Hegar  
Texas Comptroller of Public Accounts  
Post Office Box 13528  
Austin, Texas 78711-3528

Re: Effect of the Governor's vetoes of the General Appropriations Act (RQ-0047-KP)

**S U M M A R Y**

Article 4, section 14 of the Texas Constitution authorizes the Governor to veto "items of appropriation." The Texas Supreme Court has explained that "where a certain provision designates a specified purpose and the amount to be used therefor, it is an item of appropriation even though it may be included in a larger, more general item." The provisions vetoed by the Governor each designate a specific purpose and the amount to be used therefor, and they are items of appropriation subject to the Governor's veto.

The Governor's authority to veto items of appropriation is purely negative. An effective veto nullifies the setting aside of an amount of funds for a specific purpose. If additional funds apart from what was vetoed by the Governor are available, and if authority outside of the vetoed language permits expenditure of those funds for a given purpose, an entity is likely authorized to spend its other funds accordingly.

**Opinion No. KP-0049**

The Honorable Wesley H. Mau  
Hays County Criminal District Attorney  
712 South Stagecoach, Suite 2057

San Marcos, Texas 78666

Re: Questions regarding a notice prohibiting entry with a handgun onto certain premises under section 30.06 of the Penal Code and section 411.209 of the Government Code (RQ-0051-KP)

**S U M M A R Y**

Pursuant to Opinion KP-0047, it is only the courtrooms, and those offices determined to be essential to their operations, from which Hays County may prohibit concealed handguns without risk of incurring a civil penalty under section 411.209 of the Government Code.

A court would likely conclude that section 411.209 of the Government Code can be implicated by a governmental entity that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried through oral notice or by a written notice that does not conform to section 30.06 of the Penal Code.

By the terms of section 30.06 of the Penal Code, a license holder carrying a concealed handgun who refuses, after notice by the governmental entity, to exit premises from which Penal Code sections 46.03 or 46.035 prohibit handguns commits an offense punishable as a misdemeanor. Conversely, a licensee who refuses to relinquish any concealed handgun or refuses to exit the building after being given notice by a governmental entity does not commit an offense if the building is not one from which sections 46.03 and 46.035 prohibit concealed handguns.

**Opinion No. KP-0050**

The Honorable John Whitmire  
Chair, Committee on Criminal Justice  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Re: Application of Penal Code sections 30.07 and 46.03, relating to the open carry of handguns, to school districts (RQ-0054-KP)

**S U M M A R Y**

Subsection 46.03(a)(1) of the Penal Code prohibits handguns from places on which a school-sponsored activity is occurring, which places can include grounds otherwise excluded from the definition of "premises" such as public or private driveways, streets, sidewalks or walkways, parking lots, parking garages, or other parking areas.

**Opinion No. KP-0051**

The Honorable Brian Birdwell  
Chair, Committee on Nominations  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78701-2068

Re: Authority of an institution of higher education to establish certain rules regarding the carrying of handguns on campus (RQ-0076-KP)

**S U M M A R Y**

An individual whose legal rights have been infringed due to a president or chief executive officer of a public institution adopting regulations that exceed the authority granted in Senate Bill 11 would likely have standing to bring an *ultra vires* cause of action against the president or chief executive officer.

If a court concludes that the rules established by an institution of higher education with regard to where concealed handguns may be carried are

not authorized by statute, it would follow that any further enforcement of such provisions would be *ultra vires*.

**Opinion No. KP-0052**

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Authority of a commissioners court, after adoption of the budget, to adopt a standing budget policy that automatically reduces the salary line item of an employee of an elected official upon the employee's departure from the position (RQ-0033-KP)

**S U M M A R Y**

Chapter 111 of the Local Government Code does not prohibit as a matter of law the adoption of an order that automatically transfers funds to reduce compensation for a position when the position has been vacated and filled by a new employee. Whether a commissioners court may implement such an order with respect to a specific position depends on the particular circumstances, including any law that specifically governs compensation for the position.

Section 74.104 of the Government Code does not permit a commissioners court to reduce a court coordinator's salary by automatic operation of standing commissioners court orders without a determination of reasonable compensation by the judge who selected the court coordinator.

**Opinion No. KP-0053**

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Eligibility for forgiveness of a B-On-Time loan (RQ-0034-KP)

**S U M M A R Y**

A court would likely conclude that additional credit hours taken at an institution other than the one awarding the baccalaureate degree that do not cause the total hours credited to the student by the institution awarding the baccalaureate degree to exceed the statutory limit and that were taken for the purpose of maintaining a job with the student's employer do not disqualify the student from having a B-On-Time loan forgiven under section 56.462 of the Act.

**Opinion No. KP-0054**

The Honorable Val J. Varley

Red River District and County Attorney

400 North Walnut Street

Clarksville, Texas 75426-4012

Re: Whether the common-law doctrine of incompatibility prohibits simultaneous service as a county sheriff and a member of the board of trustees of a school district (RQ-0036-KP)

A court would likely conclude that, under the facts you describe, the common-law doctrine of incompatibility does not prohibit an individual's simultaneous service as the Red River County Sheriff and as a board trustee of the Clarksville Independent School District.

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

TRD-201505905

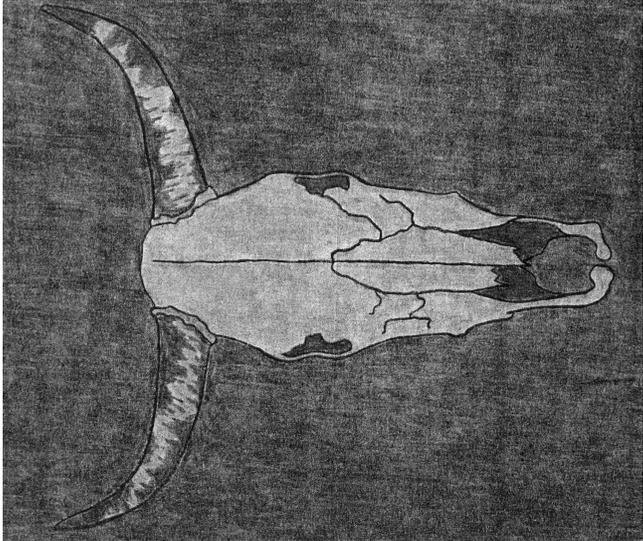
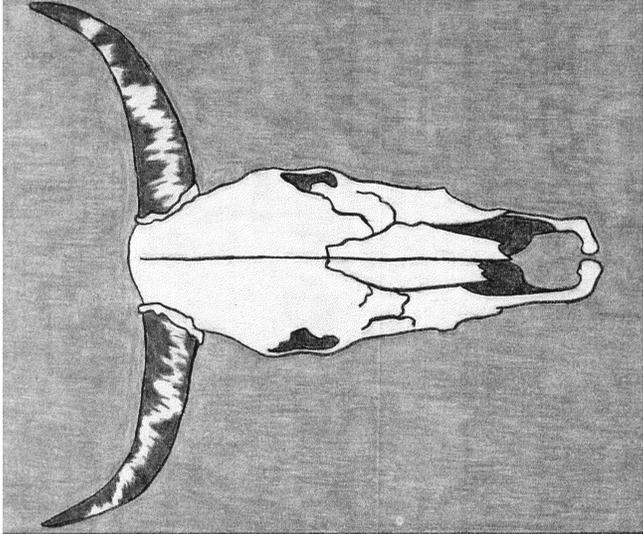
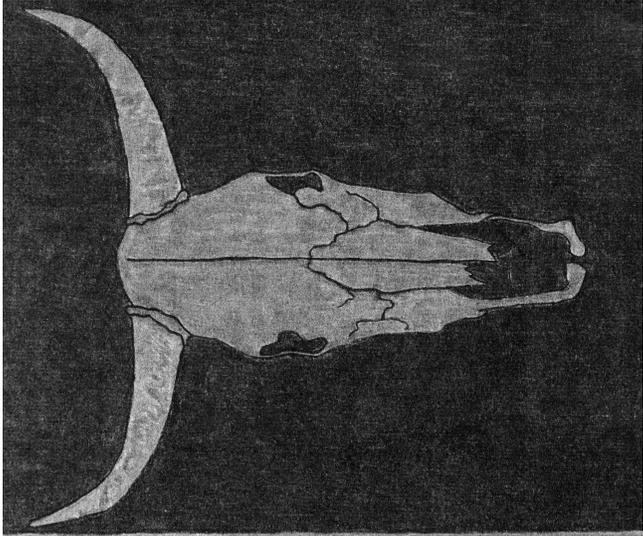
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 22, 2015





# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

##### 1 TAC §355.456

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.456, concerning Reimbursement Methodology, to add an additional eligibility criterion for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) high medical needs add-on reimbursement rate.

##### Background and Justification

This rule establishes the reimbursement methodology for the ICF/IID program administered by the Texas Department of Aging and Disability Services (DADS). Although DADS administers the program, HHSC maintains the reimbursement rules.

In January 2015, HHSC amended this rule, 1 TAC §355.456, to create an add-on payment for non-state-owned ICFs/IID that provide services to an individual who has lived in a State Supported Living Center (SSLC) for at least six months prior to referral to the non-state-owned facility if the individual has (1) a level of need (LON) that includes a medical LON increase but not a LON of pervasive plus and (2) a Resource Utilization Group (RUG-III) classification in the major (RUG-III) classification groups of Extensive Services, Rehabilitation, Special Care, or Clinically Complex. At that time, DADS began the initiative with 24 ICF beds and four providers; as of this date, one six-bed provider is no longer participating, leaving 18 ICF/IID beds approved in this initiative.

The 2016-2017 General Appropriations Act appropriated funds for an add-on payment to non-state operated ICF/IID facilities providing services to individuals with high medical needs. The appropriations funded add-on payments for 150 ICF/IID beds, including the original 18 ICF/IID beds, for the 2016-17 biennium. It was anticipated the ICF/IID beds for FY 2016 would be filled with residents from closed SSLCs, but because there were no SSLC closures, the demand for moving these SSLC residents has decreased. At the same time, the option of an ICF/IID add-on rate

might be useful for similar individuals with IDD residing in nursing facilities who want to move to a community setting.

This proposed rule expands the eligibility criteria to include not only individuals from an SSLC but also individuals who are living in a Medicaid-certified nursing facility prior to referral to a non-state operated facility. The individual also must satisfy the same the RUG-III classification group criteria that an SSLC resident must satisfy, but not the LON requirement. This allows more flexibility to utilize the appropriated funds while also serving individuals identified through the Preadmission Screening and Resident Review process.

HHSC, under its authority and responsibility to administer and implement rates, is proposing amendments to this rule to add this new eligibility criterion for the high medical needs beds and add-on payment.

##### Section-by-Section Summary

Proposed §355.456(d)(6)(C)(ii) adds residence in a Medicaid-certified nursing facility prior to referral to a non-state operated facility as an eligibility criteria for the add-on payment.

Proposed §355.456(d)(6)(C)(iii) adds "for residents of a large state-operated facility only" to the add-on rate criteria regarding a LON that includes a medical LON increase as described in 40 TAC §9.241 (relating to Level of Need Criteria), but not be assessed a LON of pervasive plus.

##### Fiscal Note

David Cook, Chief Financial Officer for DADS, has determined that during the first five-year period the amendments are in effect, there will be a fiscal impact to state government of \$1,774,869 General Revenue (GR) (\$4,147,860 All Funds (AF)) for State Fiscal Year (SFY) 2016; \$2,094,877 GR (\$4,839,170 AF) for SFY 2017; \$2,096,812 GR (\$4,839,170 AF) for SFY 2018; \$2,096,812 GR (\$4,839,170 AF) for SFY 2019; and \$2,096,812 GR (\$4,389,170 AF) for SFY 2020. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

##### Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule will be in effect, the expected public benefit is that individuals with intellectual or developmental disabilities currently residing in nursing facilities will have more options for transitioning to a smaller, less-restrictive setting.

##### Small Business and Micro-Business Impact Analysis

HHSC has determined that the proposed amendments will not have an adverse economic impact on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Sarah Hambrick, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200; by fax to (512) 730-7475; or by e-mail to RAD\_LTSS@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32. The amendments implement Texas Government Code, Chapter 531 and Texas Human Resources Code Chapter 32.

No other statutes, articles, or codes are affected by this proposal.

#### §355.456. *Reimbursement Methodology.*

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Facilities are further divided into classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows.

(1) Large facility--A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility--A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately

preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility--A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) Classes of state-operated facilities. There is a separate interim rate for each class of state-operated facilities, which are as follows:

(1) Large facility--A facility with a Medicaid certified capacity of 17 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Small facility--A facility with a Medicaid certified capacity of 16 or less as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(d) Reimbursement rate determination for non-state operated facilities. HHSC will adopt the reimbursement rates for non-state operated facilities in accordance with §355.101 of this title (relating to Introduction) and this subchapter.

(1) Reimbursement rates combine residential and day program services, i.e., payment for the full 24 hours of daily service.

(2) Reimbursement rates are differentiated based on the level of need (LON) of the individual receiving the service. The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

(3) The recommended modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on cost reports submitted by Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) providers.

(4) Direct service workers cost area. This cost area includes direct service workers' salaries and wages, benefits, and mileage reimbursement expenses. The reimbursement rate for this cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(5) Direct care trainers and job coaches cost area. This cost area includes direct care trainers' and job coaches' salaries and wages, benefits, and mileage reimbursement expenses. The reimbursement rate for this cost area is calculated as specified in §355.112 of this title.

(6) Add-on reimbursement rate. There is an available add-on reimbursement rate, in addition to the daily reimbursement rate, for certain individuals.

(A) The add-on is based on the Resource Utilization Group (RUG-III) 34 group classification system as described in §355.307 of this title (relating to Reimbursement Setting Methodology).

(B) There are three add-on groupings based on certain RUG-III 34 classification groups and the assessed Activities of Daily Living (ADL) score.

(i) Group 1 includes Extensive Services 3 (SE3), Extensive Services 2 (SE2), and Rehabilitation with ADL score of 17-18 (RAD).

(ii) Group 2 includes Rehabilitation with ADL score of 14-16 (RAC), Rehabilitation with ADL score of 10-13 (RAB), Extensive Services 1 (SE1), Special Care with ADL score of 17-18 (SSC),

Special Care with ADL score of 15-16 (SSB), and Special Care with ADL score of 4-14 (SSA).

(iii) Group 3 includes Rehabilitation with ADL score of 4-9 (RAA), Clinically Complex with Depression and ADL score of 17-18 (CC2), Clinically Complex with ADL score of 17-18 (CC1), Clinically Complex with Depression and ADL score of 12-16 (CB2), Clinically Complex and ADL score of 12-16 (CB1), Clinically Complex with Depression and ADL score of 4-11 (CA2), and Clinically Complex and ADL score of 4-11 (CA1).

(C) An individual must meet the following criteria to be eligible to receive the add-on rate:

(i) be assigned a RUG-III 34 classification in Group 1, Group 2, or Group 3;

(ii) be a resident of a large state-operated facility for at least six months immediately prior to referral or a resident of a Medicaid-certified nursing facility immediately prior to referral; and

(iii) for residents of a large state-operated facility only, have a LON which includes a medical LON increase as described in 40 TAC §9.241 (relating to Level of Need Criteria), but not be assessed a LON of pervasive plus.

(D) The add-on for each Group is determined based on data and costs from the most recent nursing facility cost reports accepted by HHSC.

(i) For each Group, compute the median direct care staff per diem base rate component for all facilities as specified in §355.308 of this title (relating to Direct Care Staff Rate Component); and

(ii) Subtract the average nursing portion of the current recommended modeled rates as specified in subsection (d)(3) of this section.

(e) Reimbursement determination for state-operated facilities. Except as provided in paragraph (2) of this subsection and subsection (f) of this section, state-operated facilities are reimbursed an interim rate with a settlement conducted in accordance with paragraph (1)(B) of this subsection. HHSC will adopt the interim reimbursement rates for state-operated facilities in accordance with §355.101 of this title and this subchapter.

(1) State-operated facilities certified prior to January 1, 2001, will be reimbursed using an interim reimbursement rate and settlement process.

(A) Interim reimbursement rates for state-operated facilities are based on the most recent cost report accepted by HHSC.

(B) Settlement is conducted each state fiscal year by class of facility. If there is a difference between allowable costs and the reimbursement paid under the interim rate, including applied income, for a state fiscal year, federal funds to the state will be adjusted based on that difference.

(2) A state-operated facility certified on or after January 1, 2001, will be reimbursed using a pro forma rate determined in accordance with §355.101(c)(2)(B) and §355.105(h) of this title (relating to Introduction and General Reporting and Documentation Requirements, Methods, and Procedures). A facility will be reimbursed under the pro forma rate methodology until HHSC receives an acceptable cost report which includes at least 12 months of the facility's cost data and is available to be included in the annual interim rate determination process.

(f) HHSC may define experimental classes of service to be used in research and demonstration projects on new reimbursement

methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless HHSC and the Centers for Medicare and Medicaid Services (CMS) approve the experimental methodology.

(g) Cost Reporting.

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

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

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

(h) Adjusting costs. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

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

(j) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, all non-state operated ICF/IID providers are required to spend at least 90 percent of revenues received through the ICF/IID daily Medicaid payment rates on Medicaid allowable costs under the ICF/IID program.

(1) Compliance with the total Medicaid spending requirement will be determined in the aggregate for all component codes controlled by the same entity across the ICF/IID, Home and Community-based Services (HCS), and Texas Home Living (TxHmL) programs within the same cost report year.

(2) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.

(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider's fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.

(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider's fiscal year to the date recognized by HHSC

or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.

(C) When part of a cost reporting period is subject to spending accountability and part is not subject to spending accountability, a provider may choose to have HHSC divide their costs for the entire cost reporting period between the part of the period subject to spending accountability and the part of the period not subject to spending accountability on a pro-rata basis (i.e., pro-rata allocation). For example, if six months of a twelve month cost reporting period are subject to spending accountability, HHSC would divide the provider's costs for the entire cost reporting period by two to determine the costs subject to spending accountability. Providers who do not choose to have HHSC divide their costs on a pro-rata basis must report their costs for the period subject to spending accountability separately from their costs for the period not subject to spending accountability (i.e., direct reporting). Once a provider indicates to HHSC their choice between a pro-rata allocation and direct reporting for a specific cost reporting period, that choice is irrevocable for that cost reporting period.

(3) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.

(4) The total Medicaid revenue for an ICF/IID provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.

(5) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable ICF/IID costs. Recoupments for each rate period under this subsection are limited to the difference between the provider's Medicaid revenues for services provided at the rates subject to spending accountability and what the provider's Medicaid revenues would have been for services provided at the Medicaid rates in effect on August 31, 2015.

(6) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.

(7) Prior to each rate period, providers will be given the option of receiving the Medicaid rates adopted by HHSC for the rate period and the Medicaid rates that were in effect on August 31, 2015. Providers who chose to receive the Medicaid rates that were in effect on August 31, 2015, will not be subject to the spending accountability requirements described in this subsection.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505854

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 424-6900



## TITLE 16. ECONOMIC REGULATION

## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 111, Subchapter A, §111.1 and §111.2; Subchapter B, §§111.10, 111.11, 111.12, 111.13, and 111.14; Subchapter C, §§111.20, 111.21, 111.22 and 111.23; Subchapter D, §§111.30, 111.35, 111.36 and 111.37; Subchapter E, §§111.40, 111.45, 111.46 and 111.47; Subchapter F, §§111.50, 111.55, 111.56 and 111.57; Subchapter G, §§111.60, 111.65 and 111.66; Subchapter H, §§111.70, 111.75, 111.76 and 111.77; Subchapter I, §§111.80, 111.85, 111.86 and 111.87; Subchapter J, §§111.90, 111.95, 111.96 and 111.97; Subchapter K, §§111.100, 111.105 and 111.106; Subchapter L, §§111.110, 111.115, 111.116 and 111.117; Subchapter N, §§111.130, 111.131 and 111.132; Subchapter O, §111.140; Subchapter P, §§111.150, 111.151, 111.152, 111.153, 111.154 and 111.155; Subchapter Q, §111.160; Subchapter R, §111.170 and §111.171; Subchapter S, §§111.180, 111.181, 111.182 and 111.183; Subchapter T, §§111.190, 111.191 and 111.192; Subchapter U, §§111.200, 111.201 and 111.202; Subchapter V, §§111.210, 111.211, 111.212, 111.213, 111.214 and 111.215; Subchapter W, §111.220; Subchapter X, §§111.230, 111.231 and 111.232, regarding the Speech-Language Pathologists and Audiologists program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 111 are necessary to implement S.B. 202 and to regulate the Speech-Language Pathologists and Audiologists program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 741, regarding Speech-Language Pathologists and Audiologists, which are still in effect.

The Department's Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) met November 17, 2015, to consider a draft of these rules and recommended proposing them in the *Texas Register* for public comment.

As part of the discussions on November 17, 2015, the Advisory Board recommended changing references from "communicative sciences or disorders" to "communication sciences and disorders." However, the proposed rules as published do not include that recommendation. The proposed rules as published retain the references to "communicative sciences or disorders" to reflect the statutory language under Texas Occupations Code §401.304(a)(1)(A), which requires an applicant for a speech-language pathology license to "possess at least a master's degree with a major in at least one of the areas of communicative sciences or disorders."

The Advisory Board also recommended updating the educational degree requirements for audiology licenses in several of the licensing provisions, but recommended retaining references in other audiology licensing provisions and in the supervision provisions to "a master's degree with a major in at least one of the areas of communicative sciences or disorders." With the exception of the out-of-state internship supervision provisions under proposed new §111.75 and §111.105, the proposed rules as published, as they relate to audiology licenses, either do not include the master's degree references or include those references but with date restrictions. S.B. 613, 82nd Legislature, Regular Session (2011), changed the educational degree requirements for audiology licenses from "at least a master's degree with a major in at least one of the areas of communicative sciences or disorders" to "at least a doctoral degree in audiology or a related hearing science." This change was effective September 1, 2011, and it applied to applications filed on or after the effective date. The proposed rules as published reflect the statutory language under Texas Occupations Code §401.304(a)(1)(B) and reflect the changes in the degree and the subject area requirements that were effective September 1, 2011, for audiology licenses. The Department seeks public comments on the degree and subject area requirements necessary to obtain an audiology license in other states in order to address the out-of-state internship supervision requirements under proposed new §111.75 and §111.105.

In addition, the discussions regarding the audiology license application and eligibility requirements under proposed new §111.75 included a recommendation to draft a reciprocity provision that would recognize, on a case-by-case basis, an out-of-state audiology license holder who had a master's degree, was licensed in good standing in the other state, and had held the out-of-state license continuously for at least five years. The provision would allow such a license holder to be eligible to obtain a Texas audiology license. The proposed rules as published do not include the recommended proposed reciprocity provision. Texas Occupations Code Chapter 401 does not include reciprocity authority except as provided under

§401.308 related to provisional licenses. The Department will further research this issue for future discussions.

The Advisory Board also discussed changing the supervision ratios for licensed audiologists, licensed interns in audiology, and licensed assistants in audiology under proposed new rule §111.154. The current ratio under the current DSHS rules is that a licensed audiologist may supervise no more than a total of four interns and/or assistants. The DSHS proposed rules published September 25, 2015 (40 TexReg 6554 - 6572) and these Department proposed rules: (1) reduce the education requirements for an assistant in audiology license from a baccalaureate degree to a high school diploma or equivalent; and (2) eliminate the supervision ratio exception. Based in part on the reduction of the educational degree required for an assistant in audiology license, the Advisory Board recommended reducing the total number of audiology interns and/or assistants that can be supervised at one time by a licensed audiologist from a total of four interns and/or assistants to a total of two interns and/or assistants. The supervision ratio for licensed speech-language pathologists, interns, and assistants remains the same at no more than a total of four interns and/or assistants. The Department has included the recommendation in these proposed rules under §111.154 and seeks public comment on this issue.

Finally, the Department renumbered the sections in the proposed new rules for the specific license types under Subchapters D through L. This change from the draft discussed by the Advisory Board will allow room for future rulemakings to further clarify the rules and make the rules more user-friendly.

Proposed new Subchapter A provides the General Provisions for the proposed new rules.

Proposed new §111.1 provides the statutory authority for the Commission and Department to regulate speech-language pathologists and audiologists.

Proposed new §111.2 creates the definitions to be used in the speech-language pathologists and audiologists program.

Proposed new Subchapter B creates the Speech-Language Pathologists and Audiologists Advisory Board.

Proposed new §111.10 provides the composition and membership requirements of the advisory board.

Proposed new §111.11 details the duties of the advisory board.

Proposed new §111.12 sets the terms and vacancies process for advisory board members.

Proposed new §111.13 provides for a presiding officer of the advisory board.

Proposed new §111.14 provides details regarding advisory board meetings.

Proposed new Subchapter C establishes the examination requirements for the program.

Proposed new §111.20 provides general examination requirements.

Proposed new §111.21 explains the written examination requirement.

Proposed new §111.22 explains the waiver of the written examination requirement.

Proposed new §111.23 details the requirements for the Jurisprudence Examination.

Proposed new Subchapter D establishes the requirements to obtain a speech-language pathology license.

Proposed new §111.30 explains the licensing requirements for those seeking a speech-language pathology license.

Proposed new §111.35 details the application and eligibility requirements for the speech-language pathology license.

Proposed new §111.36 explains the process for issuing a speech-language pathology license.

Proposed new §111.37 details the license terms and renewal requirements for the speech-language pathology license.

Proposed new Subchapter E establishes the requirements to obtain an intern in speech-language pathology license.

Proposed new §111.40 explains the licensing and internship requirements for the intern in speech-language pathology license.

Proposed new §111.45 details the application and eligibility requirements for an intern in speech-language pathology license.

Proposed new §111.46 explains the process for issuing an intern in speech-language pathology license.

Proposed new §111.47 details the license terms and renewal requirements for the intern in speech-language pathology license.

Proposed new Subchapter F establishes the requirements to obtain an assistant in speech-language pathology license.

Proposed new §111.50 explains the licensing requirements for the assistant in speech-language pathology license.

Proposed new §111.55 details the application and eligibility requirements for an assistant in speech-language pathology license.

Proposed new §111.56 explains the process for issuing an assistant in speech-language pathology license.

Proposed new §111.57 details the license terms and renewal requirements for the assistant in speech-language pathology license.

Proposed new Subchapter G establishes the requirements to obtain a temporary certificate of registration in speech-language pathology.

Proposed new §111.60 explains the registration requirements for the temporary certificate of registration in speech-language pathology.

Proposed new §111.65 details the application and eligibility requirements for the temporary certificate of registration in speech-language pathology.

Proposed new §111.66 explains the process for issuing a temporary certificate of registration in speech-language pathology.

Proposed new Subchapter H establishes the requirements to obtain an audiology license.

Proposed new §111.70 explains the licensing requirements for the audiology license.

Proposed new §111.75 details the application and eligibility requirements for an audiology license.

Proposed new §111.76 explains the process for issuing an audiology license.

Proposed new §111.77 details the license terms and renewal requirements for the audiology license.

Proposed new Subchapter I establishes the requirements to obtain an intern in audiology license.

Proposed new §111.80 explains the licensing and internship requirements for the intern in audiology license.

Proposed new §111.85 details the application and eligibility requirements for an intern in audiology license.

Proposed new §111.86 explains the process for issuing an intern in audiology license.

Proposed new §111.87 details the license terms and renewal requirements for the intern in audiology license.

Proposed new Subchapter J establishes the requirements to obtain an assistant in audiology license.

Proposed new §111.90 explains the licensing requirements for the assistant in audiology license.

Proposed new §111.95 details the application and eligibility requirements for an assistant in audiology license.

Proposed new §111.96 explains the process for issuing an assistant in audiology license.

Proposed new §111.97 details the license terms and renewal requirements for the assistant in audiology license.

Proposed new Subchapter K establishes the requirements to obtain a temporary certificate of registration in audiology.

Proposed new §111.100 explains the registration requirements for the temporary certificate of registration in audiology.

Proposed new §111.105 details the application and eligibility requirements for the temporary certificate of registration in audiology.

Proposed new §111.106 explains the process for issuing a temporary certificate of registration in audiology.

Proposed new Subchapter L establishes the requirements to obtain a dual license in speech-language pathology and audiology.

Proposed new §111.110 explains the licensing requirements for those seeking a dual license in speech-language pathology and audiology.

Proposed new §111.115 details the application and eligibility requirements for the dual speech-language pathology and audiology license.

Proposed new §111.116 explains the process for issuing a dual speech-language pathology and audiology license.

Proposed new §111.117 details the license terms and renewal requirements for the dual speech-language pathology and audiology license.

Proposed new Subchapter N establishes the continuing professional education requirements for this program.

Proposed new §111.130 provides the continuing professional education requirements and hours for this program.

Proposed new §111.131 details continuing professional education courses and credits.

Proposed new §111.132 explains the continuing professional education audit process and the records that must be kept.

Proposed new Subchapter O establishes the responsibilities of the Commission and the Department.

Proposed new §111.140 requires the Commission to adopt rules necessary to implement the Speech-Language Pathology and Audiology program, including rules governing changes to the standards of practice rules.

Proposed new Subchapter P establishes the responsibilities of the licensee and creates the code of ethics for this program.

Proposed new §111.150 requires a licensee to notify the Department of a change of name, address, or other pertinent information.

Proposed new §111.151 provides requirements for displaying a license and notifying consumers.

Proposed new §111.152 prohibits false, misleading or deceptive advertising.

Proposed new §111.153 establishes record keeping and billing requirements.

Proposed new §111.154 explains the requirements, duties and responsibilities of supervisors.

Proposed new §111.155 creates the standards of ethical practice (code of ethics) for all licensees in this program.

Proposed new Subchapter O establishes fees for the Speech-Language Pathologists and Audiologists program.

Proposed new §111.160 details all fees associated with the Speech-Language Pathologists and Audiologists program as regulated by the Commission and the Department.

Proposed new Subchapter R establishes a subchapter to address complaints.

Proposed new §111.170 requires the Department to provide a toll free number for complaints to be filed.

Proposed new §111.171 provides that the Commission will adopt rules regarding complaints involving standard of care.

Proposed new Subchapter S establishes enforcement provisions.

Proposed new §111.180 allows for administrative penalties and sanctions.

Proposed new §111.181 provides the authority to enforce Texas Occupations Code, Chapter 401 and this chapter.

Proposed new §111.182 provides the authority to order refunds for a hearing instrument.

Proposed new §111.183 requires a license holder or registration holder to surrender the license or registration to the Department on demand.

Proposed new Subchapter T establishes screening procedures.

Proposed new §111.190 provides communication screening requirements.

Proposed new §111.191 details the hearing screening process.

Proposed new §111.192 explains the authority for newborn hearing screening.

Proposed new Subchapter U establishes provisions for fitting and dispensing of hearing instruments.

Proposed new §111.200 explains registration of audiologists and interns in audiology to fit and dispense hearing instruments.

Proposed new §111.201 provides general practice requirements of audiologists and interns in audiology who fit and dispense hearing instruments.

Proposed new §111.202 creates requirements for audiologists and interns in audiology conducting audiometric testing for the purpose of fitting and dispensing hearing instruments.

Proposed new Subchapter V establishes provisions for telehealth.

Proposed new §111.210 establishes definitions relating to telehealth.

Proposed new §111.211 explains the service delivery models for speech-language pathologists.

Proposed new §111.212 creates requirements for the use of telehealth by speech-language pathologists.

Proposed new §111.213 details limitations on the use of telecommunications technology by speech-language pathologists.

Proposed new §111.214 establishes requirements for providing telehealth services in speech-language pathology.

Proposed new §111.215 establishes requirements for providing telepractice services in audiology.

Proposed new Subchapter W establishes joint rules regarding the sale of hearing instruments. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the sale of hearing instruments.

Proposed new §111.220 details the requirements regarding the sale of hearing instruments.

Proposed new Subchapter X establishes joint rules for fitting and dispensing of hearing instruments by telepractice. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the fitting and dispensing of hearing instruments by telepractice.

Proposed new §111.230 explains the purpose of the subchapter.

Proposed new §111.231 creates definitions to be used in this subchapter.

Proposed new §111.232 establishes requirements for providing telehealth services for the fitting and dispensing of hearing instruments.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the Speech-Language Pathology and Audiology program were appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the De-

partment and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §111.1, §111.2

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.1. Authority.

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable.

#### §111.2. Definitions.

Unless the context clearly indicates otherwise, the following words and terms shall have the following meanings.

- (1) ABA--The American Board of Audiology.
- (2) Act--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists.
- (3) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists; and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.
- (4) Advisory board--The Speech-Language Pathologists and Audiologists Advisory Board.
- (5) ASHA--The American Speech-Language-Hearing Association.
- (6) Assistant in audiology--An individual licensed under Texas Occupations Code §401.312 and §111.90 of this chapter and who provides audiological support services to clinical programs under the supervision of a department-approved audiologist licensed under the Act.

(7) Assistant in speech-language pathology--An individual licensed under Texas Occupations Code §401.312 and §111.60 of this chapter and who provides speech-language pathology support services under the Act.

(8) Audiologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 to practice audiology.

(9) Audiology--The application of nonmedical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communication disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.

(10) Caseload--The number of clients served by the licensed speech-language pathologist or licensed speech-language pathology intern.

(11) Client--A consumer or proposed consumer of audiology or speech-language pathology services.

(12) Commission--The Texas Commission of Licensing and Regulation.

(13) Department--The Texas Department of Licensing and Regulation.

(14) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(15) Executive director--The executive director of the department.

(16) Extended absence--More than two consecutive working days for any single continuing education experience.

(17) Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(18) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments.

(19) Hearing instrument--Any wearable instrument or device designed for, or represented as aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(20) Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(21) Intern in audiology--An individual licensed under Texas Occupations Code §401.311 and §111.80 of this chapter and who works under the direction of an individual who holds an audiology license under Texas Occupations Code §401.302 and §401.304.

(22) Intern in speech-language pathology--An individual licensed under Texas Occupations Code §401.311 and §111.40 of this

chapter and who works under the direction of an individual who holds a speech-language pathology license under Texas Occupations Code §401.302 and §401.304.

(23) Provisional Licensee--An individual granted a provisional license under Texas Occupations Code §401.308.

(24) Sale or purchase--Includes the sale, lease or rental of a hearing instrument or augmentative communication device to a member of the consuming public who is a user or prospective user of a hearing instrument or augmentative communication device.

(25) Speech-language pathologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304, to practice speech-language pathology.

(26) Speech-language pathology--The application of non-medical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or a group.

(27) Supervisor--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 and whom the department has approved to directly oversee the services provided by the assigned department-approved assistant and/or intern. The term "supervisor" and "department-approved supervisor" have the same meaning as used throughout this chapter.

(28) Telehealth--See definition(s) in Subchapter V, Telehealth.

(29) Under the direction of--The speech-language pathologist or audiologist supervises and directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505934

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER B. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

### 16 TAC §§111.10 - 111.14

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.10. Membership.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) three audiologist members;
- (2) three speech-language pathologist members; and
- (3) three members who represent the public.

(b) Advisory board members must:

- (1) have been a resident of this state for the two years preceding the date of appointment;
- (2) be from the various geographic regions of the state; and
- (3) be from varying employment settings.

(c) The advisory board members appointed under subsections (a)(1) and (2) must:

- (1) have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and
- (2) be licensed under this chapter.

(d) One of the public advisory board members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

#### §111.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

#### §111.12. Terms; Vacancies.

(a) Members are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

#### §111.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year.

(b) The presiding officer shall preside at all meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

#### §111.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Board action shall require a majority vote of those members present and voting.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505935

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER C. EXAMINATIONS

### 16 TAC §§111.20 - 111.23

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.20. License Examination--General Requirements.

The examination required by the Act shall consist of a written examination and a Jurisprudence Examination.

#### §111.21. License Examination--Written Examination.

(a) The written examination shall be the Speech-Language Pathology and Audiology Examination (Praxis exam), a national examination administered by the Educational Testing Service.

(b) An applicant shall have a passing score as determined by the Educational Testing Service on the written examination.

(c) A person who fails the examination may take a subsequent examination upon payment of a nonrefundable fee.

(d) Pursuant to Texas Occupations Code §401.307(b), an applicant who fails two examinations may not be reexamined until the person:

(1) submits a new application accompanied by a nonrefundable application fee; and

(2) presents evidence acceptable to the department of additional study in the area for which a license is sought.

#### §§111.22. Waiver of Written Examination Requirement.

(a) This section is applicable to applicants applying for a speech-language pathology license under Subchapter D or an audiology license under Subchapter H. This waiver only applies to the written examination under §111.21. The applicant must still take the Jurisprudence Examination under §111.23.

(b) The department may waive the written examination requirement and issue a license to an applicant who holds the ASHA Certificate of Clinical Competence ASHA or the ABA Certification.

(c) An applicant for a license issued by the department who currently holds the ASHA Certificate of Clinical Competence, may submit official documentation from ASHA as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this chapter for a speech-language pathology license.

(d) An applicant for a license issued by the department who currently holds either the ASHA Certificate of Clinical Competence or the ABA Certification, may submit official documentation from ASHA or ABA as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this chapter for an audiology license.

#### §111.23. License Examination--Jurisprudence Examination.

(a) The department shall develop and administer a Jurisprudence Examination to determine an applicant's knowledge of the Act, this chapter, and any other applicable laws of this state affecting the practice of speech-language pathology or audiology.

(b) The department shall revise the Jurisprudence Examination as needed.

(c) All applicants for licensure shall submit proof of successful completion of the Jurisprudence Examination at the time of application. The Jurisprudence Examination must be completed no more than six months prior to the date of licensure application.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505936

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE

### 16 TAC §§111.30, 111.35 - 111.37

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.30. Speech-Language Pathology License--Licensing Requirements.

(a) An individual shall not practice as a speech-language pathologist without a current license issued by the department. An applicant for a speech-language pathology license shall meet the requirements set out in the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recog-

nized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.).

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology, including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have a hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the thirty-six (36) hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if, the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) Supervised Professional Experience. An applicant must have completed supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §111.40.

(1) An individual shall be licensed under §111.40, prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §111.40 shall:

(A) be licensed in that other state; or

(B) hold the ASHA Certificate of Clinical Competence in speech-language pathology if the other state did not require licensing.

(e) Examination. An applicant shall pass the examination referenced under §111.21 within:

(1) the past ten (10) years; and

(2) two years of the completion date of the internship referenced in subsection (d).

(f) In the event the applicant passed the examination referenced in subsection (e) more than two years after the completion date of the internship, the applicant shall repeat the thirty-six (36) weeks supervised internship before applying for the speech-language pathology license. The applicant shall obtain the intern license as required by §111.40, prior to repeating the internship. The applicant may appeal to the executive director for waiver of the requirement to repeat the internship.

§111.35. Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on current department-approved forms.

(b) An applicant for a speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if not previously submitted when applying for an intern's license, a Course Work and Clinical Experience Form completed by the program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.30(b) - (c);

(5) a Report of Completed Speech-Language Pathology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's degree in one of the areas of communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(8) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(9) the initial application fee required under §111.160.

(c) An applicant for a speech-language pathology license must submit a completed legible set of fingerprints, on a department-approved form, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) Waiver of Clinical Experience and Examination Requirements. An applicant who currently holds the ASHA Certificate of Clinical Competence may submit official documentation from ASHA of the Certificate of Clinical Competence as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this subchapter for a speech-language pathology license. Such an applicant must submit:

(1) an original or certified copy of a signed letter from ASHA, which verifies the applicant currently holds the Certificate of Clinical Competence in the area of speech-language pathology;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency; and

(3) the required documents and fees under subsection (b)(1), (8) and (9) and subsection (c).

(e) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.36. Speech-Language Pathology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) A speech-language pathology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.37. Speech-Language Pathology License--License Terms; Renewals.

(a) A speech-language pathology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew a speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete 20 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(5) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505937

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

### 16 TAC §§111.40, 111.45 - 111.47

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.40. Intern in Speech-Language Pathology License--Licensing and Internship Requirements.

(a) An individual shall not practice as an intern in speech-language pathology without a current license issued by the department. An applicant for an intern in speech-language pathology license must meet the requirements under the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.).

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have a hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the thirty-six (36) hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) In the event the course work and clinical experience set out in subsections (b) - (c), were earned more than ten (10) years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology.

(e) An applicant who successfully completed all education and clinical requirements under this section, but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from

the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(f) An applicant whose master's degree is received at a college or university accredited by the ASHA Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements have been met and review of the transcript shows that the applicant has successfully completed at least twenty-four (24) semester credit hours acceptable toward a graduate degree in the area of speech-language pathology.

(g) Intern Plan and Agreement of Supervision. A Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted in a manner prescribed by the department and completed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern in speech-language pathology. The proposed department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the intern in speech-language pathology. The Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) the addition of other proposed department-approved supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern in speech-language pathology, each proposed department-approved supervisor must submit a signed Speech-Language Pathology Intern Plan and Agreement of Supervision Form which shall also identify all proposed department-approved supervisors.

(3) In the event the department-approved supervisor ceases supervision of the intern in speech-language pathology, the intern shall stop practicing immediately. The department shall hold the department-approved supervisor responsible for the practice of the intern in speech-language pathology until the department-approved supervisor notifies the department, in writing, of the change in supervision.

(4) Should the intern in speech-language pathology practice without approval from the department, disciplinary action may be initiated against the intern in speech-language pathology. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor may also be initiated.

(h) Internship Requirements. The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsections (b) and (c) have been met;

(2) be completed within a maximum period of forty-eight (48) months once initiated;

(3) be successfully completed after no more than two attempts;

(4) consist of thirty-six (36) weeks of full-time supervised professional experience (thirty-five (35) hours per week) totaling a minimum of 1,260 hours, or its part-time equivalent, of supervised

professional experience in which clinical work has been accomplished in speech-language pathology. Professional experience of less than five hours per week cannot be used to meet the supervised professional experience.

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than thirty-six (36) clock hours of supervisory activities to include:

(A) six hours of in person observations per segment by the department-approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the department-approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the department.

(i) Extension Request. An applicant who does not meet the time frames defined in subsection (h)(1) and (2), shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the department-approved supervisor in a manner prescribed by the department. Evaluation of the intern's progress of performance from all department-approved supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted in a manner prescribed by the department. The department shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §111.21 is required.

(j) An intern, who is employed full-time as defined by subsection (h)(4), and wishes to practice at an additional site, shall notify the department in a manner prescribed by the department.

(k) Evaluations. During each segment of the internship, each department-approved supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the department upon request.

(l) Changes. Prior to implementing changes in the internship, approval from the department is required.

(1) If the intern changes his or her department-approved supervisor or adds additional department-approved supervisors, a current Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed department-approved supervisor and approved by the department before the intern may resume practice. The Report of Completed Internship Form or information shall be completed by the past department-approved supervisor and intern and submitted to the department upon completion of that portion of the internship. It is the decision of the department-approved supervisor to determine whether the internship is acceptable. The department shall review the form and inform the intern of the results.

(2) Each department-approved supervisor who ceases supervising an intern shall submit a Report of Completed Internship Form

for the portion of the internship completed under the department-approved supervisor's supervision. This must be submitted within thirty (30) days of the date the supervision ended.

(3) If the intern changes his or her employer but the department-approved supervisor and the number of hours employed per week remain the same, the department-approved supervisor shall notify the department in a manner prescribed by the department of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(m) In any professional context the licensee must indicate the licensee's status as a speech-language pathology intern.

(n) If the intern wishes to continue to practice after the completion of the supervised professional experience as defined in subsection (h), the intern shall apply for either:

(1) a speech-language pathology license under Subchapter D, if the intern passed the examination referenced in §111.21; or

(2) a temporary certificate of registration under Subchapter G if the intern has not passed the examination referenced in §111.21.

(o) If the intern holds a valid license, the intern may continue to practice under supervision for up to thirty (30) days after the department receives the Report of Completed Internship Form.

(p) A licensed intern shall not use "SLP-CFY" or "SLP-CF" as indicators for their credentials. Licensees shall use "Intern SLP" or "SLP Intern" to shorten their professional title.

(q) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.45. Intern in Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an intern in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if the graduate degree has not been officially conferred, an original or certified copy of transcript(s) and verification from the university attended verifying the applicant successfully completed all requirements for the graduate degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5) a Course Work and Clinical Experience Form completed by the university program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.40(b) - (c);

(6) an Intern Plan and Agreement of Supervision Form completed by the proposed department-approved supervisor and

signed by both the applicant and the proposed department-approved supervisor;

(7) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(8) the initial application fee required under §111.160.

(c) An applicant for an intern in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.46. Intern in Speech-Language Pathology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An intern in speech-language pathology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.47. Intern in Speech-Language Pathology License--License Terms; Renewals.

(a) An intern in speech-language pathology license is valid for one year from the date of issuance and may be renewed annually.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an intern in speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete ten (10) hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit;

(5) submit an evaluation of the intern's progress or performance from all department-approved supervisors and any intern plans and supervisory evaluations for completed segments;

(6) submit an Intern Plan and Agreement of Supervision Form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern shall provide an explanation of the reason for not practicing; and

(7) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505938

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

### 16 TAC §§111.50, 111.55 - 111.57

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements.

(a) An individual shall not practice as an assistant in speech-language pathology without a current license issued by the department. An applicant for an assistant in speech-language pathology license must meet the requirement under the Act and this section. The applicant must meet the following requirements:

(1) possess a baccalaureate degree with an emphasis in communicative sciences or disorders;

(2) have acquired at least twenty-four (24) semester hours in speech-language pathology and/or audiology with a grade of "C" or above with the following conditions:

(A) at least 18 of the 24 semester hours must be in speech-language pathology;

(B) at least three of the 24 semester hours must be in language disorders;

(C) at least three of the 24 semester hours must be in speech disorders; and

(D) the 24 semester hours excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than twenty-five (25) hours of clinical observation in the area of speech-language pathology and twenty-five (25) hours of clinical assisting experience in the area of

speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past ten (10) years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a), were earned more than ten (10) years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the department.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences or disorders may qualify for the assistant license. The department shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed twenty-four (24) semester credit hours in communicative sciences or disorders, which may include some leveling hours.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a). The applicant must bear all expenses incurred during the procedure. The department shall evaluate the documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the department.

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and §111.154 and shall submit:

(A) the Supervisory Responsibility Statement Form;  
and

(B) the prescribed Clinical Deficiency Plan.

(2) The department shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within sixty (60) days of the issue date of the assistant's license or the licensed assistant must submit a new plan.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the licensed assistant's performance; and

(C) a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, in person supervision. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Department staff shall evaluate the documentation required in paragraph (4) and inform the licensed assistant and licensed speech-language pathologist who provided the training if acceptable.

(6) A licensed assistant may continue to practice under 100% direct, in person supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4).

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a Supervisory Responsibility Statement Form shall be submitted to the department seeking approval for the change in supervision. If the documentation required by paragraph (4), has not been received and approved by the department, approval for the change in supervision shall not be granted.

(f) A Supervisory Responsibility Statement Form shall be completed and signed by both the applicant and the proposed department-approved supervisor who agrees to assume responsibility for all services provided by the licensed assistant or submitted in a manner prescribed by the department. The proposed department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant. The Supervisor Responsibility Statement Form shall be submitted upon:

(A) application for an assistant license;

(B) license renewal when there is a change in supervisor;

(C) other changes in supervision; and

(D) the addition of other department-approved supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the licensed assistant, each licensed speech-language pathologist department-approved supervisor shall be identified on the Supervisor Responsibility Statement Form, and meet the minimum requirement of supervision as referenced in subsection (g)(4). The licensed assistant shall only provide services for the caseload of the licensed speech-language pathologist department-approved supervisors.

(3) A licensed assistant may renew the license if there is a change in supervision, but may not practice until a new Supervisory Responsibility Statement Form is approved.

(4) In the event the licensed speech-language pathologist department-approved supervisor ceases supervision of the licensed assistant, the licensed speech-language pathologist department-approved supervisor shall notify the department, in writing, and shall inform the licensed assistant to stop practicing immediately. The department shall hold the licensed department-approved supervisor responsible for the practice of the licensed assistant until written notification has been received by the department.

(5) Should the licensed assistant practice without approval from the department, disciplinary action may be initiated against the licensed assistant. If the licensed speech-language pathologist department-approved supervisor had knowledge of this violation, disciplinary action against the licensed speech-language pathologist department-approved supervisor may also be initiated.

(g) A licensed speech-language pathologist department-approved supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

(1) Initial contacts directly with the client shall be conducted by the licensed speech-language pathologist department-approved supervisor.

(2) Following the initial contact, the licensed speech-language pathologist department-approved supervisor shall determine whether the licensed assistant has the competence to perform specific duties before delegating tasks.

(3) The licensed speech-language pathologist department-approved supervisor shall provide a minimum of eight (8) hours per month of supervision, at least four (4) hours of which are direct, and at least one (1) hour of which is in person and onsite supervision where the licensed assistant is providing the therapy. This paragraph applies whether the licensed assistant's practice is employed full- or part-time. For the purposes of this paragraph the telehealth and telepractice provisions allowed by §§111.212 - 111.214, may be used for up to seven (7) hours of supervision. When determining the amount and type of supervision, the department-approved supervisor must consider the skill and experience of the licensed assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the department-approved supervisor.

(4) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant's and client's performance. Such documentation may be requested by the department.

(A) A licensed assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(B) A licensed assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the licensed assistant has been appropriately trained and the assessments are conducted under the direction of the licensed speech-language pathologist department-approved supervisor. A licensed assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(h) Although the licensed speech-language pathologist department-approved supervisor may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist department-approved supervisor shall ensure that all services provided are in compliance with this chapter.

(1) The licensed speech-language pathologist department-approved supervisor need not be present when the licensed assistant is completing the assigned tasks; however, the licensed speech-language pathologist department-approved supervisor shall document all services provided and the supervision of the licensed assistant.

(2) The licensed speech-language pathologist department-approved supervisor shall keep job descriptions and performance records of the licensed assistant. Records shall be current and made available upon request to the department.

(3) The licensed speech-language pathologist department-approved supervisor of the licensed assistant shall:

(A) in writing, determine the skills and assigned tasks the licensed assistant is able to carry out within the licensed assistant's scope of practice. This document must be agreed upon by the licensed assistant and the licensed speech-language pathologist department-approved supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review them with the licensed assistant who will provide the service; and

(D) maintain responsibility for the services provided by the licensed assistant.

(4) The licensed assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist department-approved supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist department-approved supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(5) Examples of duties that a licensed speech-language pathologist department-approved supervisor may assign to a licensed assistant who has received appropriate training include the following:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist department-approved supervisor;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests if the test developer does not specify a graduate degreed examiner and the department-approved supervisor has determined the licensed assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials;

(H) participate with the licensed speech-language pathologist department-approved supervisors' research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist department-approved supervisor;

(I) may write lesson plans based on the therapy program developed by the licensed speech-language pathologist department-ap-

proved supervisor. The lesson plans shall be reviewed and approved by the licensed speech-language pathologist department-approved supervisor; and

(J) must only work with assigned cases of the licensed speech-language pathologist department-approved supervisor's caseload.

(i) The licensed assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathologist department-approved supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the department;

(12) perform invasive procedures;

(13) screen or diagnose clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to clients, family, or staff;

(16) provide client or family counseling;

(17) sign any formal document relating to the reimbursement for or the provision of speech-language pathology services without the licensed assistant's licensed speech-language pathologist department-approved supervisor's signature; or

(18) use "SLP-A" or "STA" as indicators for their credentials. Licensees shall use "Assistant SLP" or "SLP Assistant" to shorten their professional title.

(j) The licensed speech-language pathologist department-approved supervisor of the licensed assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by a licensed assistant and that the licensed assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objectives and review them with the licensed assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the licensed assistant.

(k) A licensed assistant may represent special education and speech pathology at the ARD meetings with the following stipulations.

(1) The licensed assistant shall have written documentation of approval from the licensed, speech-language pathologist department-approved supervisor.

(2) The licensed assistant shall have three years experience as a licensed assistant in the school setting.

(3) The licensed assistant may attend, with written approval of the speech-language pathologist department-approved supervisor, a student's annual review ARD meeting if the meeting involves a student for whom the licensed assistant provides services. If a licensed assistant attends a meeting as provided by this rule, the licensed speech-language pathologist department-approved supervisor is not required to attend the meeting. A licensed speech-language pathologist department-approved supervisor must attend an ARD meeting if the purpose of the meeting is to develop a student's initial IEP or if the meeting is to consider the student's dismissal, unless the licensed speech-language pathologist department-approved supervisor has submitted his or her recommendation in writing on or before the date of the meeting.

(4) The licensed assistant shall present IEP goals and objectives that have been developed by the licensed speech-language pathologist department-approved supervisor and reviewed with the parent by the licensed speech-language pathologist department-approved supervisor.

(5) The licensed assistant shall discontinue participation in the ARD meeting, and contact the department-approved supervising speech-language pathologist, when questions or changes arise regarding the IEP document.

(l) In any professional context the licensee must indicate the licensee status as a licensed speech-language pathology assistant.

(m) The department may audit a random sampling of licensed assistants for compliance with this section and §111.154.

(1) The department shall notify a licensed assistant and licensed speech-language pathologist department-approved supervisor in a manner prescribed by the department that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant and the licensed speech-language pathologist department-approved supervisor, who agreed to accept responsibility for the services provided by the licensed assistant, shall provide in a manner prescribed by the department the requested proof of compliance to the department.

(3) The licensed assistant and the licensed speech-language pathologist department-approved supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(n) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.55. Assistant in Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an assistant in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) a Supervisory Responsibility Statement Form completed by the licensed supervisor who agrees to accept responsibility for the services provided by the assistant and signed by both the applicant and the proposed department-approved supervisor or submitted in a manner prescribed by the department;

(3) an original or certified copy of the transcript(s) showing the conferred degree of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech-language pathology and/or audiology;

(4) if not previously submitted, a Clinical Observation and Clinical Experience Form completed by the university program director or designee of the college or university training program verifying the applicant completed the requirements set out in §111.50(a)(3);

(5) for an applicant who did not obtain the hours referenced in paragraph (4), a Clinical Deficiency Plan Form to obtain the hours lacking;

(6) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(7) the initial application fee required under §111.160.

(c) An applicant for an assistant in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.56. Assistant in Speech-Language Pathology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An assistant in speech-language pathology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.57. Assistant in Speech-Language Pathology License--License Terms; Renewals.

(a) An assistant in speech-language pathology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an assistant in speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete twenty (20) hours of continuing education as required under §111.30;

(4) comply with the continuing education audit process described under §111.32, if selected for an audit;

(5) submit, in a manner prescribed by the department, a Supervisory Responsibility Statement Form or information from each department-approved supervisor providing the supervision unless the assistant is currently not practicing or the department-approved supervisor(s) has not changed; and

(6) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505939

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179

◆ ◆ ◆  
SUBCHAPTER G. REQUIREMENTS  
FOR TEMPORARY CERTIFICATE OF  
REGISTRATION IN SPEECH-LANGUAGE  
PATHOLOGY

**16 TAC §§111.60, 111.65, 111.66**

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.60. Temporary Certificate of Registration in Speech-Language Pathology--Registration Requirements.

(a) An individual shall not practice as a temporary speech-language pathologist without a current certificate of registration issued by the department. An applicant for a temporary certificate of registration in speech-language pathology shall meet the requirements of the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.).

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) Supervised Professional Experience. An applicant must have completed supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §111.40.

(1) An individual shall be licensed under §111.40, prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §111.40 shall:

(A) be licensed in that other state; or

(B) hold the ASHA Certificate of Clinical Competence in speech-language pathology if the other state did not require licensing.

(e) If issued, this certificate entitles an applicant approved for examination as required by §111.21, to practice speech-language pathology under the supervision of a department-approved speech-language pathologist for a period of time ending eight weeks after the next scheduled examination. During each eight week time period, no fewer than four hours of direct in person supervision and four hours of indirect supervising activities shall be completed.

(f) A temporary certificate of registration shall not be renewed.

(g) The department-approved supervisor and applicant shall complete the Temporary Supervisory Form and submit it to the department. The applicant shall not practice until the application is approved by the department.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.65. Temporary Certificate of Registration in Speech-Language Pathology--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for a temporary certificate of registration in speech-language pathology must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communication sciences and disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) a Course Work and Clinical Experience Form or information completed by the university program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.60(b) - (c);

(5) a Report of Completed Speech-Language Pathology Internship Form or information completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's degree in one of the areas of communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Temporary Supervisory Form completed by the applicant's proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(8) the temporary certificate of registration fee required under §111.160.

(c) An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all certificate of registration requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.66. Temporary Certificate of Registration in Speech-Language Pathology--Issuing Registration.

(a) The department will issue to an applicant whose application has been approved, a temporary certificate of registration containing the registrant's name, registration number, and expiration date.

(b) The certificate of registration shall expire eight weeks after the next scheduled examination as required by §111.21.

(c) The certificate of registration is non-renewable.

(d) A certificate of registration issued by the department remains the property of the department.

(e) The department will issue a duplicate certificate of registration upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505940

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER H. REQUIREMENTS FOR AUDIOLOGY LICENSE

### 16 TAC §§111.70, 111.75 - 111.77

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.70. Audiology License--Licensing Requirements.

(a) An individual shall not practice as an audiologist without a current license issued by the department. An applicant for the audiology license shall meet the requirements set out in the Act and this section.

(b) Education. The doctoral degree in audiology or a related hearing science shall be completed at a college or university that has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.).

(c) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) shall have the ASHA Council for Clinical Certification evaluate the course work to determine whether the applicant qualified for the Certificate of Clinical Competence. The applicant shall bear all expenses incurred during the procedure.

(d) Examination. An applicant shall pass the examination referenced under §111.21, within the past 10 years from the date of the application.

(e) An applicant who previously held the ASHA Certificate of Clinical Competence or the ABA certification may have the certificate reinstated and apply for licensure under §111.75(d).

§111.75. Audiology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an audiology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred doctoral degree in audiology or a related hearing science;

(3) if the degree was not earned at an institution as described in §111.70(b), official documentation from the ASHA Council on Academic Accreditation that the conferred doctoral degree is adequate for ASHA Certification or from the ABA that the conferred doctoral degree is adequate for ABA Certification;

(4) if not previously submitted when applying for an intern's license, a Course Work and Clinical Experience Form completed by the program director or designee of the college or university attended which verifies the applicant has met the requirements under §111.70(b) - (c);

(5) if the applicant currently holds an intern in audiology license, a Report of Completed Audiology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's or doctoral degree in communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(8) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(9) the initial application fee required under §111.160.

(c) An applicant for an audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) Waiver of Clinical Experience and Examination Requirements. An applicant who currently holds either the ASHA Certificate of Clinical Competence or the ABA Certification may submit official documentation from ASHA or ABA as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this subchapter for an audiology license. Such an applicant must submit:

(1) an original or certified copy of a signed letter from ASHA or ABA which verifies the applicant currently holds the ASHA Certificate of Clinical Competence or ABA Certification in the area of audiology;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a doctoral degree in audiology or a related hearing science; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency; and

(3) the required documents and fees under subsections (b)(1), (8) and (9) and subsection (c).

(e) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.76. Audiology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An audiology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.77. Audiology License--License Terms; Renewals.

(a) An audiology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete 20 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(5) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in audiology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505941

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER I. REQUIREMENTS FOR INTERN IN AUDIOLOGY LICENSE

### 16 TAC §§111.80, 111.85 - 111.87

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.80. Intern in Audiology License--Licensing and Internship Requirements.

(a) An individual shall not practice as an intern in audiology without a current license issued by the department. An applicant for the intern in audiology license shall meet the requirements set out in the Act and this section.

(b) Education. The doctoral degree in audiology or a related hearing science shall be completed at a college or university that has

a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.).

(c) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) shall have the ASHA Council for Clinical Certification evaluate the course work to determine whether the applicant qualified for the Certificate of Clinical Competence. The applicant shall bear all expenses incurred during the procedure.

(d) The applicant shall submit the department prescribed form signed by the university program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the department.

(e) Intern Plan and Agreement of Supervision. The department prescribed Intern Plan and Agreement of Supervision for an Intern in Audiology Form shall be completed and signed in a manner prescribed by the department by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern in audiology. The proposed department-approved supervisor shall: hold a valid Texas license in audiology; possess a master's degree or higher with a major in one of the areas of communicative sciences or disorders, if the supervisor applied for the audiology license before September 1, 2011, or possess a doctoral degree or higher in audiology or a related hearing science, if the supervisor applied for the audiology license on or after September 1, 2011; and meet the requirements set out in the Act and §111.154.

(1) Written approval from the department shall be required prior to practice by the intern in audiology. The Intern Plan and Agreement of Supervision of An Intern in Audiology Form shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and/or
- (D) addition of other proposed department-approved supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the intern in audiology, the department-approved supervisor shall be identified and separate forms shall be submitted by each department-approved supervisor.

(3) In the event the department-approved supervisor ceases supervision of the intern, the intern in audiology shall stop practicing immediately until a new supervisor is approved by the department.

(4) Should the intern in audiology practice without approval from the department, disciplinary action shall be initiated against the intern. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor shall also be initiated.

(f) Internship Requirements. The internship shall:

(1) consist of 1,600 hours of supervised clinical work as defined in paragraph (2). The internship shall begin after completion of all academic course work; and

(2) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, fam-

ily/client consultation, and/or counseling related to the management process of individuals.

(g) Changes. Prior to implementing changes in the internship, written approval from the department is required.

(1) If the intern in audiology changes his or her department-approved supervisor or adds additional department-approved supervisors, a current Intern Plan and Agreement of Supervision of An Intern in Audiology Form shall be submitted by the new proposed supervisor and approved by the department before the intern in audiology may resume practice. A Report of Completed Internship of An Intern in Audiology Form shall be completed by the previous department-approved supervisor and the intern in audiology and submitted to the department upon completion of that portion of the internship. It is the decision of the department-approved supervisor to determine whether the internship meets the department's requirements. The department shall review the form and inform the intern in audiology of the results.

(2) A department-approved supervisor who ceases supervising an intern in audiology shall submit a Report of Completed Internship of An Intern in Audiology Form or information for the portion of the internship completed under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(3) If the intern in audiology changes his or her employer but the department-approved supervisor and the number of hours employed per week remain the same, the department-approved supervisor shall submit a signed statement or submit in a manner prescribed by the department giving the name, address and phone number of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(4) In any professional context the licensee must indicate the licensee's status as an intern in audiology.

(h) The intern in audiology may continue to practice under supervision if he or she holds a valid intern in audiology license while awaiting the processing of the audiology license. If the intern in audiology changes department-approved supervisors, the new department-approved supervisor shall first submit the Intern Plan and Agreement of Supervision of An Intern in Audiology Form or information and receive department approval before the intern in audiology may resume practice.

(i) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

*§111.85. Intern in Audiology License--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an intern in audiology license must submit the following required documentation:

- (1) a completed application on a department-approved form;
- (2) an original or certified copy of the most current transcript(s);
- (3) a Course Work and Clinical Experience Form for Audiology Intern completed by the university program director or designee of the college or university attended which verifies the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the department, and has completed all required academic and clinical course work;

(4) an Intern Plan and Agreement of Supervision Form completed by the proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(5) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(6) the initial application fee required under §111.160.

(c) An applicant for an intern in audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.86. Intern in Audiology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An intern in audiology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.87. Intern in Audiology License--License Terms; Renewals.

(a) An intern in audiology license is valid for one year from the date of issuance and may be renewed annually.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an intern in audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) submit an evaluation of the intern's progress or performance from all department-approved supervisors and any intern plans and supervisory evaluations for completed segments;

(4) submit an Intern Plan and Agreement of Supervision Form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern shall provide an explanation of the reason for not practicing; and

(5) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in audiology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505942

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179

◆ ◆ ◆  
**SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE**

**16 TAC §§111.90, 111.95 - 111.97**

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.90. Assistant in Audiology License--Licensing Requirements.

(a) An individual shall not practice as an assistant in audiology without a current license issued by the department. An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section.

(b) An assistant in audiology shall meet the following requirements:

(1) reach the minimum age of 18 years old and possess a high school diploma or equivalent;

(2) complete the approved 20-hour certification course from the Council for Accreditation of Occupational Hearing Conservation (CAOHC) and earn a passing score on the examination; and

(3) submit the department-prescribed Supervisory Responsibility Statement for an Assistant in Audiology Form, that shall include:

(A) an agreement signed by both the licensed proposed department-approved supervisor (who must meet the requirements set out in the Act and §111.154) and the applicant, to enter into a supervisory relationship, in which the proposed department-approved supervisor agrees to assume responsibility for the applicant's activities, and the applicant agrees to perform only those activities assigned by the department-approved supervisor that are not prohibited under this section; and

(B) a plan for a minimum of twenty-five (25) hours of job-specific competency-based training to be carried out by the department-approved supervisor. Until this training is complete, the licensed assistant in audiology may practice only under direct supervision by the department-approved supervisor.

(c) Upon satisfactory completion of job-specific competency-based training, the department-approved supervisor shall submit the Report of Completed Training for an Assistant in Audiology Form on

behalf of the licensed assistant in audiology. After the department approves the report, the licensed assistant may practice only in compliance with the supervision requirements under subsection (e)(3).

(d) The Supervisory Responsibility Statement for an Assistant in Audiology Form must be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the licensed assistant in audiology. The department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant in audiology. The Supervisory Responsibility Statement for an Assistant in Audiology Form shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) addition of other department-approved supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the licensed assistant in audiology, each licensed audiologist shall be identified and a separate Supervisory Responsibility Statement for an Assistant in Audiology Form be submitted by each department-approved supervisor in a manner prescribed by the department.

(3) A licensed assistant in audiology may renew the license but may not practice until a new Supervisory Responsibility Statement for an Assistant in Audiology Form is approved.

(4) In the event the department-approved supervisor ceases supervision of the licensed assistant in audiology, the licensed assistant in audiology shall stop practicing immediately.

(5) Should the licensed assistant in audiology practice without approval from the department, disciplinary action shall be initiated against the licensed assistant in audiology. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor shall also be initiated.

(e) A licensed audiologist department-approved supervisor shall assign duties and provide appropriate supervision to the licensed assistant in audiology.

(1) All diagnostic contacts shall be conducted by the licensed audiologist department-approved supervisor.

(2) Following the initial diagnostic contact, the licensed audiologist department-approved supervisor shall determine whether the licensed assistant in audiology has the competence to perform specific non-diagnostic and non-prohibited duties before delegating tasks (as referenced in subsection (f)(4)).

(3) The licensed audiologist department-approved supervisor shall be on-site at the licensed assistant in audiology's employment location for at least ten (10) hours per week, or forty (40) hours per month, and provide at least one (1) hour per week or four (4) hours per month of direct supervision, at the location where the assistant is employed. However, the licensed audiologist department-approved supervisor shall be on-site and provide direct supervision for the duties described under subsections (f)(4)(A) - (D). This paragraph applies whether the licensed assistant in audiology is employed full- or part-time. For the purposes of this paragraph, the telehealth and telepractice provisions described under §111.215 may be used except for duties described under subsections (f)(4)(A) - (D) where the department-approved supervisor must be on-site and provide direct supervi-

sion. When determining the amount and type of supervision, the department-approved supervisor must consider the skill and experience of the licensed assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the department-approved supervisor.

(4) Supervisory records shall be maintained by the licensed audiologist department-approved supervisor for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant in audiology's and client's performance. Such documentation may be requested by the department.

(A) A licensed assistant in audiology may conduct assessments for the purpose of documenting patient's progress in aural rehabilitation therapy. Such assessments are not diagnostic in nature and include data collection and clinical observation, if the licensed assistant in audiology has been appropriately trained and the assessments are conducted under the direction of the licensed audiologist department-approved supervisor.

(B) A licensed assistant in audiology may not conduct an evaluation which includes diagnostic testing, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(f) Although the licensed audiologist department-approved supervisor may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist department-approved supervisor shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist department-approved supervisor need not be in direct supervision when the licensed assistant is completing the assigned tasks; however, the licensed audiologist department-approved supervisor shall document all services provided and the supervision of the licensed assistant.

(2) The licensed audiologist department-approved supervisor shall keep job descriptions and performance records. Records shall be current and be made available upon request to the department.

(3) The licensed assistant may execute specific components of the clinical hearing program if the licensed audiologist department-approved supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed audiologist department-approved supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(4) Examples of duties that a licensed audiologist department-approved supervisor may assign to a licensed assistant who has received appropriate training include the following:

(A) conduct or participate in, with the department-approved supervisor on-site, hearing screening including screening otoscopy, tympanometry, otoacoustic emissions procedures and pure tone air conduction procedures, but may not diagnose hearing loss or disorders of the auditory system, or make statements of severity or implication;

(B) assist the audiologist, who must be on-site, with play audiometry, visual reinforcement audiometry, and tasks such as picture-pointing speech audiometry;

(C) assist the audiologist, who must be on-site, in the evaluation of difficult-to-test patients;

(D) assist the audiologist, who must be on-site, with technical tasks for diagnostic evaluation such as preparing test rooms, attaching electrodes, and preparing patients prior to procedures;

(E) maintain clinical records;

(F) prepare clinical materials;

(G) participate with the department-approved supervisor in research projects, staff development, public relations programs, or similar activities as designated and supervised by the department approved supervisor;

(H) maintain equipment by conducting biologic and electroacoustic calibration of audiometric equipment, perform preventative maintenance checks and safety checks of equipment;

(I) explain the proper care of hearing instruments and assistive listening devices to patients;

(J) maintain hearing instruments including cleaning, replacing ear mold tubing, minor hearing instrument repairs, determining need for repair, and performing biologic and electroacoustic checks of hearing instruments;

(K) provide case history and/or self-assessment forms and clarify questions on the forms to patients as needed;

(L) conduct basic record keeping and prepare paperwork for signature by the audiologist;

(M) coordinate ear mold and hearing instrument records or repairs and other orders;

(N) attach hearing aids to computers and use software to verify internal electroacoustic settings; and

(O) perform other non-diagnostic duties not prohibited in paragraph (5), for which the assistant has been trained and demonstrates appropriate skills, as assigned by the licensed audiologist department-approved supervisor.

(5) The licensed assistant shall not:

(A) conduct aural habilitation or rehabilitation activities or therapy;

(B) provide carry-over activities (therapeutically designed transfer of a newly acquired communication ability to other contexts and situations) for patients in aural rehabilitation therapy;

(C) collect data during aural rehabilitation therapy documenting progress and results of therapy;

(D) administer assessments during aural rehabilitation therapy to assess therapeutic progress;

(E) conduct any audiological procedure that requires decision-making or leads to a diagnosis, even under direct supervision;

(F) interpret results of procedures and evaluations, except for screening tests;

(G) make diagnostic statements, or propose or develop clinical management strategies;

(H) make ear impressions;

(I) cause any substance to enter the ear canal or place any instrument or object in the ear canal for the purpose of removing cerumen or debris;

(J) make any changes to the internal settings of a hearing instrument manually or using computer software;

(K) represent audiology at staff meetings or on an admission, review and dismissal (ARD) committee;

(L) attend staffing meetings or ARD committee meetings without the department-approved supervisor being present;

(M) design a treatment program;

(N) determine case selection;

(O) present written or oral reports of client information, except to his or her department-approved supervisor;

(P) refer a client to other professionals or other agencies;

(Q) use any title which connotes the competency of a licensed audiologist; or

(R) practice as a licensed assistant in audiology without a valid Supervisory Responsibility Statement for an Audiology Assistant Form or information on file with the department.

(g) In any professional context the licensee must indicate the licensee's status as a licensed audiology assistant.

(h) A licensed assistant in audiology may not engage in the fitting, dispensing or sale of a hearing instrument; however, a licensed assistant in audiology who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant in audiology license when performing those activities.

(i) The department may audit a random sampling of licensed assistants in audiology for compliance with this section and §111.154.

(1) The department shall notify a licensed assistant in audiology and the licensed audiologist department-approved supervisor in a manner prescribed by the department that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant in audiology and the licensed audiologist department-approved supervisor, who agreed to accept responsibility for the services provided by the licensed assistant in audiology, shall provide the requested proof of compliance to the department in a manner prescribed by the department.

(3) The licensed assistant in audiology and the licensed audiologist department-approved supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(j) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.95. Assistant in Audiology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an assistant in audiology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) a Supervisory Responsibility Statement Form or information completed by the proposed department-approved supervisor who agrees to accept responsibility for the services provided by the assistant and signed by both the applicant and the proposed department-approved supervisor or submitted in a manner prescribed by the department;

(3) certification on the application that the applicant is at least 18 years old;

(4) high school diploma or equivalent;

(5) an original or certified copy of the Council for Accreditation of Occupational Hearing Conservation (CAOHC) certificate indicating that the applicant has completed the required CAOHC training and passed the required examination;

(6) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(7) the initial application fee required under §111.160.

(c) An applicant for an assistant in audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.96. Assistant in Audiology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An assistant in audiology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.97. Audiology Assistant License--License Terms; Renewals.

(a) An assistant in audiology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an assistant in audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete 20 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit;

(5) submit, in a manner prescribed by the department, a Supervisory Responsibility Statement Form or information from each department-approved supervisor providing the supervision unless the assistant is currently not practicing or the department-approved supervisor(s) has not changed; and

(6) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in audiology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505943

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER K. REQUIREMENTS FOR AUDIOLOGY TEMPORARY CERTIFICATE OF REGISTRATION

### 16 TAC §§111.100, 111.105, 111.106

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.100. Temporary Certificate of Registration in Audiology--Registration Requirements.

(a) An individual shall not practice as a temporary audiologists without a current certificate of registration issued by the department. An applicant for a temporary certificate of registration in audiology must meet the requirements of the Act and this section.

(b) Education. The doctoral degree in audiology or a related hearing science shall be completed at a college or university that has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C., §1001 et seq.).

(c) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) shall have the ASHA Council for Clinical Certification evaluate the course work to determine whether he applicant qualified for the Certificate of Clinical Competence. The applicant shall bear all expenses incurred during the procedure.

(d) Examination. An applicant shall pass the examination referenced under §111.21, within the past ten (10) years from the date of the application.

(e) If issued, this certificate entitles an applicant approved for examination as required by §111.21, to practice audiology under a department-approved supervisor for a period of time ending eight weeks after the next scheduled examination.

(f) A temporary certificate of registration shall not be renewed.

(g) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.105. Audiology Temporary Certificate of Registration--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for a temporary certificate of registration in audiology must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred doctoral degree in audiology or a related hearing science;

(3) if the degree was not earned at an institution as described in §111.100(b), official documentation from the ASHA Council on Academic Accreditation that the conferred doctoral degree is adequate for ASHA Certification or from the ABA that the conferred doctoral degree is adequate for ABA Certification;

(4) if not previously submitted when applying for an intern's license, a Course Work and Clinical Experience Form completed by the university program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.100(b) - (c);

(5) if the applicant currently holds an intern in audiology license, a Report of Completed Audiology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's or doctoral degree in one of the areas of communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Temporary Supervisory Form completed by the applicant's proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(8) the temporary certificate of registration fee required under §111.160.

(c) An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all certificate of registration requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.106. Temporary Certificate of Registration in Audiology--Issuing Registration.

(a) The department will issue to an applicant whose application has been approved, a temporary certificate of registration containing the registrant's name, registration number, and expiration date.

(b) The temporary certificate of registration shall expire eight weeks after the next scheduled examination as required by §111.21.

(c) The temporary certificate of registration is non-renewable.

(d) A temporary certificate of registration issued by the department remains the property of the department.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505944

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

### 16 TAC §§111.110, 111.115 - 111.117

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.110. Dual License in Speech-Language Pathology and Audiology--Licensing Requirements.

An applicant for a dual license in speech-language pathology and in audiology as referenced in the Act shall meet the requirements set out in §111.30 and §111.70.

§111.115. Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for a dual license in speech-language pathology and audiology must submit the following required documentation:

(1) all of the documentation required under §111.35 for a Speech-Language Pathology License;

(2) all of the documentation required under §111.75 for an Audiology License;

(3) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(4) two separate initial application fees required under §111.160, or if the applicant already holds one of the licenses, the initial application fee required under §111.160 for the other license.

(c) An applicant for a dual license must submit a completed legible set of fingerprints, on a form prescribed by the department, to

the Department of Public Safety for the purpose of obtaining criminal history record information, unless the applicant has already submitted fingerprints as part of a single license. An applicant must successfully pass a criminal history background check.

(d) An applicant that qualifies for a waiver under §111.35 or §111.75 must submit the waiver documentation required under those two sections.

§111.116. Dual License in Speech-Language Pathology and Audiology--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) A dual license in speech-language pathology and audiology issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.117. Dual License in Speech-Language Pathology and Audiology--License Terms; Renewals.

(a) A dual license in speech-language pathology and audiology is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew a dual license in speech-language pathology and audiology, a licensee must:

(1) submit a separate renewal application form and other documents required under §111.37 and §111.77;

(2) successfully pass a criminal history background check;

(3) complete 30 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(5) pay two separate license renewal fees required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology or audiology.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505945

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER N. CONTINUING PROFESSIONAL EDUCATION

### 16 TAC §§111.130 - 111.132

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.130. Continuing Professional Education--Requirements and Hours.

(a) Continuing professional education is required for the following licenses under this chapter:

(1) speech-language pathology license;

(2) intern in speech-language pathology license;

(3) assistant in speech-language pathology license;

(4) audiology license;

(5) assistant in audiology license; and

(6) dual license in speech-language pathology and audiology.

(b) The intern in audiology license is exempt from the continuing professional education requirements.

(c) A continuing education unit (CEU) is the basic unit of measurement used to credit individuals with continuing education activities for licensure. One CEU is defined as 10 clock hours of participation in an approved continuing education experience.

(d) Pursuant to 16 Texas Administrative Code (TAC) Chapter 59, a continuing education hour (clock hour) shall be 50 minutes of attendance in an approved continuing education course.

(e) The following minimum continuing education hours and units are required to renew a license:

(1) License issued for a two-year term: 20 clock hours (two CEUs), with 2 clock hours (0.2 CEUs) in ethics;

(2) Dual license in speech-language pathology and audiology (two-year term): 30 clock hours (three CEUs), with 2 clock hours (0.2 CEUs) in ethics; and

(3) Intern in speech-language pathology license (one-year term): 10 clock hours (1 CEUs), with 1 clock hour (0.1 CEU) in ethics.

(f) Continuing education hours earned before the original effective date of a license are not acceptable.

(g) Earned continuing education hours exceeding the minimum requirement in a previous renewal period shall first be applied to the continuing education requirement for the current renewal period.

(1) A maximum of 10 additional clock hours may be accrued during a license period to be applied to the next consecutive renewal period. Two of the 10 additional clock hours of the rollover hours may be in ethics.

(2) A maximum of 15 additional clock hours may be accrued by dual speech-language pathology and audiology licensees during a license period to be applied to the next consecutive renewal period.

§111.131. Continuing Professional Education--Courses and Credits.

(a) Continuing professional education shall be earned in one of the following areas:

(1) basic communication processes;

(2) speech-language pathology;

(3) audiology;

(4) ethics; or

(5) an area of study related to the areas listed in paragraphs (1) - (4) of this subsection.

(b) Any continuing education activity shall be provided by a department approved provider with the exception of activities referenced in subsection (c). A list of department approved providers shall be made available to all licensees on the department's website.

(c) University or college course work completed with a grade of at least a "C" or for credit from an accredited college or university in the areas listed in subsection (a)(1) - (4) shall be approved for 10 continuing education hours per semester hour, with a maximum of 20 continuing education hours per course.

(d) Completion of the Jurisprudence Examination shall count as one hour of the continuing education requirement for professional ethics per renewal period.

§111.132. Continuing Professional Education--Records and Audits.

(a) The licensee shall be responsible for maintaining a record of his or her continuing education experiences for at least three years.

(b) Proof of completion of a valid continuing education experience shall include the name of the licensee, the provider of the event, the title and date of the event, and the number of continuing education hours earned. Acceptable verification shall be:

(1) a letter, Continuing Education (CE) registry, or form bearing a valid signature or verification as designated by the department approved provider;

(2) in the event verification referenced in paragraph (1) of this subsection cannot be obtained, the department may accept verification from the presenter of an approved event if the presenter can also provide proof that the event was acceptable to an approved provider; or

(3) an original or certified copy of the university or college transcript if earned under §111.131(c).

(c) The documentation, certificates, diplomas, or other documentation verifying earning of continuing education hours shall not be forwarded to the department at the time of renewal unless the department selected the licensee for audit.

(d) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until Continuing Education requirements have been met.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505946

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

### 16 TAC §111.140

The new rule is proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.140. Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Speech-Language Pathologists and Audiologists program. Pursuant to 16 TAC §60.22, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules without being proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

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

Filed with the Office of the Secretary of State on December 28, 2015.



## SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

### 16 TAC §§111.150 - 111.155

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.150. Changes of Name, Address or Other Information.

(a) A licensee is required to provide current name, address, telephone number, and employment information. The licensee shall notify the department of any changes within thirty (30) days of such changes on a department-approved form or using a department-approved method.

(b) A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name. The licensee shall submit the duplicate/replacement fee required under §111.160.

#### §111.151. Consumer Information and Display of License.

(a) A licensee shall notify each client of the name, mailing address, telephone number and website of the department for the purpose of directing complaints to the department. A licensee shall display this notification:

(1) on a sign prominently displayed in the primary place of business of each licensee; and

(2) on a written document such as a written contract, a bill for service, or office information brochure provided by the licensee to a client or third party.

(b) A licensee shall display the license certificate with a current license card as issued by the department in the primary location of practice.

(c) A holder of a temporary certificate of registration shall display the certificate as issued by the department in the primary location of practice.

(d) A licensee shall not make any alteration on official documents issued by the department.

#### §111.152. Advertising.

A licensee shall not present false, misleading, deceptive, or non-verifiable information relating to the services of the licensee or any person supervised or employed by the licensee.

#### §111.153. Recordkeeping and Billing.

(a) A licensee shall maintain accurate records of professional services rendered.

(b) Records must be maintained for a minimum of five consecutive years or longer as warranted.

(c) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(d) Records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(e) A licensee shall bill a client or a third party only for the services actually rendered in the manner agreed to by the licensee and the client or the client's authorized representative.

(f) A licensee shall provide, in clear language, a written explanation of the charges for speech-language pathology and/or audiology services previously made on a bill or statement for the client upon the written request of a client, a client's guardian, or a client's parent, if the client is a minor.

(g) A licensee shall comply with the Health and Safety Code §311.0025, which prohibits improper, unreasonable, or medically unnecessary billing by hospitals or health care professionals.

(h) A licensee shall use current and appropriate diagnostic and procedure codes.

#### §111.154. Requirements, Duties, and Responsibilities of Supervisors.

(a) A licensee must have two years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's internship year shall be counted toward the two years of experience.

(b) A licensee may not supervise an individual that is related to the licensee within the first degree of consanguinity.

(c) A department-approved supervisor of an intern in speech-language pathology must possess at least a master's degree with a major in one of the areas of communicative sciences or disorders.

(d) A department-approved supervisor of an intern in audiology must possess either:

(1) at least a master's degree with a major in one of the areas of communicative sciences or disorders, if the department-approved supervisor applied for the audiology license before September 1, 2011; or

(2) at least a doctoral degree in audiology or a related hearing science, if the department-approved supervisor applied for the audiology license on or after September 1, 2011.

(e) A department-approved supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a current license;

(B) the supervisor has been approved by the department;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the department approves the supervisory agreement; and

(4) comply with the following supervision ratios:

(A) supervise no more than a total of four (4) speech-language pathology interns and/or assistants;

(B) supervise no more than a total of four (4) audiology interns and/or assistants, if an assistant holds a baccalaureate degree; or

(C) supervise no more than a total of two (2) audiology interns and/or assistants, if an assistant holds a high school diploma or equivalent.

(f) In addition to the provisions listed in subsection (e), a department-approved supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD) meetings, except as provided by §111.50.

(g) A licensed intern or assistant shall abide by the decisions made by his or her department-approved supervisor relating to the intern's or assistant's scope of practice. In the event the department-approved supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the department and any other appropriate authority.

§111.155. Standards of Ethical Practice (Code of Ethics).

(a) A licensee shall:

(1) engage in only those aspects of the profession that are within the scope of the licensee's competence considering level of education, training, and experience;

(2) ensure a safe therapy environment;

(3) provide services as specified in the treatment plan, Individual Education Plan (IEP), or Individualized Family Service Plans (IFSP);

(4) seek appropriate medical consultation whenever indicated;

(5) seek to identify competent, dependable referral sources for clients;

(6) maintain objectivity in all matters concerning the welfare of the client;

(7) ensure that all equipment used is in proper working order and is properly calibrated;

(8) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided;

(9) provide accurate information to clients and the public about the nature and of communication disorders and about the profession and the services rendered;

(10) notify the department in writing of changes of name, highest academic degree granted, address, and telephone number. The department is not responsible for lost, misdirected, or undelivered mail;

(11) notify the department of changes in name or mailing address within 30 days of such change(s). Notification must include the name, mailing address, and zip code, and be mailed, faxed, or sent by electronic mail to the department;

(12) inform the department of violations of the Act, this code of ethics, or of any other provision of this chapter;

(13) comply with any order relating to the licensee which is issued by the department;

(14) report in accordance with the Family Code §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person;

(15) cooperate with the department by promptly furnishing required documents and by promptly responding to a request for information from, or a subpoena issued by, the department or the department's designee;

(16) be subject to disciplinary action by the department if the licensee or registrant is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Article 56.31 (relating to the Crime Victims Compensation Act);

(17) comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers; and

(18) fully inform clients of the:

(A) results of an evaluation within sixty (60) days, upon request;

(B) nature and possible effects of the services rendered; and

(C) nature, possible effects, and consequences of activities if the client is participating in research or teaching activities.

(b) A licensee shall not:

(1) engage in the medical treatment of speech-language and hearing disorders;

(2) jeopardize a client's safety by any inattentive behavior;

(3) guarantee, directly or by implication, the results of any therapeutic procedures except as follows:

(A) a reasonable statement of prognosis may be made; and

(B) caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(4) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(5) provide services if the services cannot be provided with reasonable skill or safety to the client;

(6) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(7) engage in sexual contact, including intercourse, kissing, or fondling, with a client or an assistant, intern, or student supervised by the licensee;

(8) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's provision of professional services;

(9) reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community;

(10) participate in activities that constitute a conflict of professional interest which may include the following:

(A) exclusive recommendation of a product that the licensee owns or has produced;

(B) lack of accuracy in the performance description of a product a licensee or registrant has developed; or

(C) restriction of freedom of choice for sources of services or products;

(11) use his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee's or registrant's personal gain or profit;

(12) misrepresent his or her training or competence;

(13) falsify records;

(14) aid or abet the practice of an unlicensed person when that person is required to have a license under the Act;

(15) interfere with a department investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or the department's designee or by the use of threats or harassment against any person;

(16) intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage for or from any health care professional. The provisions of the Texas Health and Safety Code §161.091, concerning the prohibition of illegal remuneration apply to licensees;

(17) endanger the health, welfare, or safety of the public;  
or

(18) use threats, threatening behavior, or acts of violence towards clients, employees, or employers.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505948

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER Q. FEES

### 16 TAC §111.160

The new rule is proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.160. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Speech Language Pathology License:

(1) Initial application fee (includes two-year initial license)--\$150.

(2) Renewal application fee (for two-year license)--\$100.

(c) Intern in Speech Language Pathology License:

(1) Initial application fee (includes one-year initial license)--\$75.

(2) Renewal application fee (for one year license)--\$75.

(d) Assistant in Speech Language Pathology License:

(1) Initial application fee (includes two-year initial license)--\$150.

(2) Renewal application fee (for two-year license)--\$100.

(e) Temporary Certificate of Registration in Speech Language Pathology: Initial application fee (includes certificate of registration)--\$55.

(f) Audiology License:

(1) Initial application fee (includes two-year initial license)--\$150.

(2) Renewal application fee (for two-year license)--\$100.

(g) Intern in Audiology License:

(1) Initial application fee (includes one-year initial license)--\$75.

(2) Renewal application fee (for one-year license)--\$75.

(h) Assistant in Audiology License:

(1) Initial application fee (includes two-year initial license)--\$150.

(2) Renewal application fee (for two-year license)--\$100.

(i) Temporary Certificate of Registration in Audiology: Initial application fee (includes certificate of registration)--\$55.

(j) Dual License in Speech Language Pathology and Audiology:

(1) Initial application fee (includes two-year initial license):

(A) An applicant for a dual license in speech-language pathology and audiology shall submit two separate initial application fees for speech-language pathology and audiology.

(B) An applicant who currently holds one license and wishes to obtain a dual license shall submit the initial application fee for the other license.

(2) Renewal application fee (for two-year license): Each license must be renewed separately and fees will be determined separately.

(k) A duplicate/replacement fee for a license or certificate issued under this chapter is \$25.

(l) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(m) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(n) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505949

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER R. COMPLAINTS

### 16 TAC §§111.170, §111.171

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.170. Telephone Number for Complaints.

The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

#### §111.171. Complaints Regarding Standard of Care.

The commission will adopt rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505950

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER S. ENFORCEMENT PROVISIONS

### 16 TAC §§111.180 - 111.183

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to

adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.180. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 401, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 401 and any associated rules.

#### §111.181. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 401 and any associated rules may be used to enforce Texas Occupations Code, Chapter 401 and this chapter.

#### §111.182. Refunds.

(a) The commission or executive director may order an audiologist to pay a refund to a consumer who returns a hearing instrument(s) during the 30-day trial period required by the rules adopted under Subchapter W (regarding Joint Rule Regarding the Sale of Hearing Instruments) of this chapter.

(b) If the 30-day period ends on a Sunday or a holiday, then the 30-day period shall not expire until the next business day.

(c) The licensee shall have thirty (30) days from the date of a consumer's return of the hearing instrument(s) to reimburse the consumer.

(d) In the event that the licensee fails to reimburse the consumer within the prescribed period in subsection (c) of this section, then the licensee may be subject to additional penalties and/or sanctions provided for under the Act and rules.

#### §111.183. Surrender of License.

(a) A licensee may offer to surrender the license to the executive director. The executive director will accept the voluntary surrender of the license and void it immediately.

(b) When a licensee has offered the surrender of the license after a complaint has been filed alleging violations of the Act or this chapter, and the executive director has accepted the surrender, that surrender is deemed to be the result of a formal disciplinary action.

(c) A license which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505951

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER T. SCREENING PROCEDURES

### 16 TAC §§111.190 - 111.192

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.190. Communication Screening.

(a) Individuals licensed under the Act may participate in communication screening.

(b) Communication screening should include cursory assessments of language and speech to determine if further testing is indicated. Formal instruments and informal observations may be used for the assessment. If the screening is not passed, a detailed evaluation is indicated.

(1) The aspects of language to be screened may include phonology, morphology, syntax, semantics, and pragmatics.

(2) The aspects of speech to be screened may include articulation or speech sound production, voice (including phonation and resonance), and fluency.

(c) Language and speech screening should be conducted in the client's dominant language and primary mode of communication.

#### §111.191. Hearing Screening.

(a) Individuals licensed under the Act may participate in hearing screening.

(b) Hearing screening shall be performed and interpreted as follows.

(1) Use a screening level of 25 dB HL (ANSI, 1996) for pre-kindergarten and kindergarten, and 20 dB HL (ANSI, 1996) for grades 1 through 12, at the frequencies of 1,000, 2,000, and 4,000 hertz (Hz) in both ears.

(2) The criterion for failure is no response at the screening level at any one frequency in either ear.

(3) Screening failures shall be followed with a second pure-tone air conduction screening utilizing the same protocol within four weeks.

(c) If the second pure-tone air conduction screening is failed, a recommendation shall be made for a professional evaluation by a licensed physician or a licensed audiologist. If the person screened was a minor, the recommendation shall be made to a parent or guardian.

#### §111.192. Newborn Hearing Screening.

(a) Individuals licensed under the Act may participate in universal newborn hearing screening as defined by the Texas Health and Safety Code, Chapter 47.

(b) Individuals licensed under this Act are subject to 25 TAC Chapter 37, regarding reporting hearing screening or audiologic outcomes to the Department of State Health Services (DSHS) through the designated electronic tracking system and 40 TAC §108.9, regarding referral of children under the age of three years to Early Childhood Intervention (ECI) within two days of identification.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505952

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

### 16 TAC §§111.200 - 111.202

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.200. Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments.

(a) The audiology license constitutes registration to fit and dispense hearing instruments.

(b) The audiology intern license and the temporary audiology certificate constitute registration to fit and dispense hearing instruments under the supervision of a licensed audiologist approved by the department to supervise the internship.

#### §111.201. General Practice Requirements of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology registered to fit and dispense hearing instruments shall:

(1) adhere to the federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations §801.420 and §801.421;

(2) ensure that all equipment used by the licensee within his or her scope of practice shall be calibrated to ensure compliance with the American National Standards Institute (ANSI), S3.6, 1989, Specification for Audiometers, or S3.6, 1996, Specification for Audiometers;

(3) receive a written statement before selling a hearing instrument that is signed by a licensed physician preferably one who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing instrument. If the client is age 18 or over, the registered audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the registered audiologist or intern in audiology:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical

evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing instrument. I do not wish medical evaluation before purchasing a hearing instrument;" and

(4) verify appropriate fit of the hearing instrument(s), which may include real ear measures, functional gain measures, or other professionally accepted measures.

§111.202. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology who fits and dispenses hearing instruments shall comply with this section when testing hearing for the purpose of determining the need for amplification and the verification of the appropriate fit of hearing instrument(s).

(1) Licensees must adhere to the most current American National Standards Institute (ANSI) octave band criteria for permissible ambient noise levels during audiometric testing.

(2) This requirement is best met when a stationary acoustical enclosure is utilized.

(3) A stationary acoustical enclosure is any fixed enclosed space in which an individual is located for the purpose of testing hearing to threshold. A stationary acoustical enclosure may also be known as an audiometric or hearing test booth, room, suite, area, or space.

(4) Procedures referenced in Texas Occupations Code §401.401 should be followed when testing outside of a stationary acoustical enclosure.

(A) Hearing testing that occurs in an area that does not meet the standard of a stationary acoustical enclosure for the purpose of determining the need for amplification is not considered a diagnostic or threshold measurement.

(B) In the event amplification is fit and verification measures cannot be completed in a stationary acoustical enclosure, instrumentation that is minimally affected by ambient noise including but not limited to, real ear measures, shall be utilized to assure the appropriate fit of the amplification.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505953

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER V. TELEHEALTH

### 16 TAC §§111.210 - 111.215

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§111.210. Definitions Relating to Telehealth.

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

(1) Client--A consumer or proposed consumer of speech-language pathology or audiology services.

(2) Client site--The physical location of the client at the time the services are being furnished via telecommunications.

(3) Consultant--Any professional who collaborates with a provider of telehealth services to provide services to clients.

(4) Facilitator--The individual at the client site who assists with the delivery of the telehealth services at the direction of the audiologist or speech-language pathologist.

(5) Provider--An individual who holds a current, renewable, unrestricted speech-language pathology or audiology license under Texas Occupations Code §401.302 and §401.304; or an individual who holds an audiology intern license under Texas Occupations Code §401.311.

(6) Provider site--The physical location at which the speech-language pathologist or audiologist delivering the services is located at the time the services are provided via telecommunications which is distant or remote from the client site.

(7) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(8) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telepractice services.

(9) Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to a client from a provider.

(10) Telehealth services--The application of telecommunication technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention, and/or consultation.

(11) Telepractice--The use of telecommunications technology by a license holder for an assessment, intervention, or consultation regarding a speech-language pathology or audiology client.

(12) Telepractice services--The rendering of audiology and/or speech-language pathology services through telepractice to a

client who is physically located at a site other than the site where the provider is located.

§111.211. Service Delivery Models of Speech-Language Pathologists.

(a) Telehealth may be delivered in a variety of ways, including, but not limited to those set out in this section.

(1) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another.

(2) Clinician interactive model is a synchronous, real time interaction between the provider and client or consultant that may occur via telecommunication links.

(b) Self-monitoring/testing model refers to when the client or consultant receiving the services provides data to the provider without a facilitator present at the site of the client or consultant.

(c) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.

§111.212. Requirements for the Use of Telehealth by Speech-Language Pathologists.

(a) The requirements of this section apply to the use of telehealth by speech-language pathologists.

(b) A provider shall comply with the commission's Code of Ethics and Scope of Practice requirements when providing telehealth services.

(c) The scope, nature, and quality of services provided via telehealth are the same as that provided during in-person sessions by the provider.

(d) The quality of electronic transmissions shall be equally appropriate for the provision of telehealth services as if those services were provided in person.

(e) A provider shall only utilize technology which they are competent to use as part of their telehealth services.

(f) Equipment used for telehealth services at the clinician site shall be maintained in appropriate operational status to provide appropriate quality of services.

(g) Equipment used at the client/patient site at which the client or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.

(h) The initial contact between a licensed speech-language pathologist and client shall be at the same physical location to assess the client's candidacy for telehealth, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications prior to the client receiving telehealth services.

(i) A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the telehealth services and adjust their practice to maximize the client or consultant level of comfort.

(j) When a provider collaborates with a consultant from another state in which the telepractice services are delivered, the consultant in the state in which the client receives services shall be the primary care provider for the client.

(k) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telehealth services were provided in person.

(l) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(m) Upon request, a provider shall submit to the department data which evaluates effectiveness of services provided via telehealth including, but not limited to, outcome measures.

(n) Telehealth providers shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(o) Notification of telehealth services shall be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints.

§111.213. Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

(a) The limitations of this section apply to the use of telecommunications technology by speech-language pathologists.

(b) Supervision of a licensed assistant and/or intern in speech-language pathology shall not be undertaken through the use of telecommunications technology unless an exception to this prohibition is secured pursuant to the terms of this section.

(c) An exception to subsection (b) of this section shall be requested by the speech-language pathologist submitting the prescribed alternate supervision request form for review by the department. The department shall approve or not approve the plan. The plan shall be for not more than one year's duration.

(d) If the exception referenced in subsection (c) of this section is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the department. The department shall approve or not approve the plan.

(e) Telehealth services may not be provided by correspondence only, e.g., mail, email, faxes, although they may be adjuncts to telepractice.

§111.214. Requirements for Providing Telehealth Services in Speech-Language Pathology.

(a) A provider of telehealth services who practices in the State of Texas shall be licensed by the department.

(b) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

§111.215. Requirements for Providing Telepractice Services in Audiology.

(a) Unless otherwise legally authorized to do so, an individual shall not render telepractice services in audiology from the State of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as that term is defined in this subchapter and renders only those telepractice services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telepractice services. Modes of communication that do not utilize such telecommunications technology, including facsimile and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telepractice services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telepractice services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telepractice session.

(e) The provider of telepractice services, prior to allowing a facilitator to assist the provider in rendering telepractice services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the rendering of audiology services for which no form of license, permit, authorization or exemption under the Texas Occupations Code is required; and

(2) a task for which the facilitator holds and acts in accordance with any license, permit, authorization or exemption required under the Texas Occupations Code to perform the task.

(g) A provider shall not render telepractice services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telepractice services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telepractice services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telepractice services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent audiology service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) Providers and facilitators involved in the provider's delivery of telepractice services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telepractice services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(k) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505954

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179

◆ ◆ ◆  
**SUBCHAPTER W. JOINT RULE REGARDING  
THE SALE OF HEARING INSTRUMENTS**

**16 TAC §111.220**

The new rule is proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

*§111.220. Requirements Regarding the Sale of Hearing Instruments.*

(a) This subchapter constitutes the rules required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the commission with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board. The requirements of this subchapter shall be repealed or amended only through consultation with, and mutual action by, both advisory boards.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the department.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed audiologist or licensed intern in audiology may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed audiologist or licensed intern in audiology and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive day trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed audiologist or licensed intern in audiology in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice.";

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed audiologist or intern in audiology, you may contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone (512) 463-6599, Toll-Free (in Texas): (800) 803-9202";

(9) the printed name, license type, signature and license number of the licensed audiologist or licensed intern in audiology who dispensed the hearing instrument;

(10) the supervisor's name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within thirty (30) days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b) of this section; and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the

department's inspection and shall include, but are not limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this section, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505955

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER X. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

### 16 TAC §§111.230 - 111.232

The new rules are proposed under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §111.230. Purpose.

Pursuant to Texas Occupations Code §401.2022 and §402.1023, the commission, with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, shall adopt rules to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. This subchapter contains rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

#### §111.231. Definitions.

Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Client--A consumer or proposed consumer of services.

(3) Client site--The site at which the client is physically located.

(4) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(5) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post fitting counseling for the purpose of fitting and dispensing hearing instruments.

(6) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(7) Provider--An individual who holds a current, renewable, unrestricted audiology license under Texas Occupations Code, §401.302 and §401.304; an individual who holds an audiology intern license under Texas Occupations Code, §401.311; or an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision.

(8) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(9) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(10) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(11) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(12) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

§111.232. Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.

(a) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as

that term is defined in this subchapter and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(e) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption is required by law; and

(2) those tasks for which the individual who is acting as a facilitator otherwise holds and acts in accordance with any license, permit, authorization or exemption required by law to perform the tasks.

(g) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) A client's initial professional contact with a provider shall be in person at the same physical location.

(k) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client con-

fidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(l) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505956

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 112, Subchapter A, §§112.1 and §112.2; Subchapter B, §§112.10, 112.11, 112.12, 112.13 and 112.14; Subchapter C, §§112.20, 112.21, 112.22, 112.23, 112.24, 112.25 and 112.26; Subchapter D, §§112.30, 112.31, 112.32 and 112.33; Subchapter E, §§112.40, 112.41, 112.42, 112.43 and 112.44; Subchapter F, §§112.50, 112.51, 112.52 and 112.53; Subchapter G, §112.60 and §112.61; Subchapter H, §§112.70, 112.71 and 112.72; Subchapter I, §112.80; Subchapter J, §§112.90, 112.91, 112.92, 112.93, 112.94, 112.95, 112.96, 112.97 and 112.98; Subchapter L, §112.110; Subchapter M, §112.120; Subchapter N, §§112.130, 112.131, 112.132, 112.133 and 112.134; Subchapter O, §112.140; and Subchapter P, §112.150, regarding the Hearing Instrument Fitters and Dispensers program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 112 are necessary to implement S.B. 202 and to regulate the Hearing Instrument Fitters and Dispensers program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 141, regarding Fitting and Dispensing of Hearing Instruments, which are still in effect.

The Department's Hearing Instrument Fitters and Dispensers Advisory Board was scheduled to meet on November 24, 2015. Although the board lacked a quorum, the members present discussed a draft of these proposed rules with the Department before they were published in the *Texas Register* for public comment.

Proposed new Subchapter A provides the General Provisions for the proposed new rules.

Proposed new §112.1 provides the statutory authority for the Commission and Department to regulate hearing instrument fitters and dispensers.

Proposed new §112.2 creates the definitions to be used in the hearing instrument fitters and dispensers program.

Proposed new Subchapter B creates the Hearing Instrument Fitters and Dispensers Advisory Board.

Proposed new §112.10 provides the composition and membership requirements of the advisory board.

Proposed new §112.11 details the duties of the advisory board.

Proposed new §112.12 sets the terms and vacancies process for advisory board members.

Proposed new §112.13 provides for a presiding officer of the advisory board.

Proposed new §112.14 provides details regarding advisory board meetings.

Proposed new Subchapter C establishes the examination requirements for the program.

Proposed new §112.20 provides general examination requirements.

Proposed new §112.21 explains the examination qualifications.

Proposed new §112.22 details the different examinations and content.

Proposed new §112.23 details the examination scores and notices regarding results.

Proposed new §112.24 explains the process if an applicant fails an examination.

Proposed new §112.25 establishes the qualifications for examination proctors.

Proposed new §112.26 details the requirements for the Jurisprudence Examination.

Proposed new Subchapter D establishes the requirements to obtain a hearing instrument fitter and dispenser license.

Proposed new §112.30 details the application and eligibility requirements for the hearing instrument fitter and dispenser license.

Proposed new §112.31 explains the process for issuing a hearing instrument fitter and dispenser license.

Proposed new §112.32 details the license terms and renewal requirements for the hearing instrument fitter and dispenser license.

Proposed new §112.33 provides the application requirements for a license holder from another state seeking a Texas hearing instrument fitter and dispenser license.

Proposed new Subchapter E establishes the requirements to obtain an apprentice permit.

Proposed new §112.40 details the application and eligibility requirements for an apprentice permit.

Proposed new §112.41 explains the process for issuing an apprentice permit.

Proposed new §112.42 details the permit terms and extension requirements for the apprentice permit.

Proposed new §112.43 explains the supervision requirements for the apprentice permit.

Proposed new §112.44 provides the continuing education requirements for an apprentice permit.

Proposed new Subchapter F establishes the requirements to obtain a temporary training permit.

Proposed new §112.50 details the application and eligibility requirements for a temporary training permit.

Proposed new §112.51 explains the process for issuing a temporary training permit.

Proposed new §112.52 details the permit terms and extension requirements for the temporary training permit.

Proposed new §112.53 explains the supervision and temporary training requirements for a temporary training permit.

Proposed new Subchapter G establishes the financial security requirements.

Proposed new §112.60 explains the criteria for filing a surety bond or other form of financial security.

Proposed new §112.61 provides information on filing a claim and recovery under a surety bond or other form of financial security.

Proposed new Subchapter H establishes the continuing education requirements for this program.

Proposed new §112.70 details the hours and courses for continuing education requirements.

Proposed new §112.71 explains the continuing education auditing process and the records that must be kept.

Proposed new §112.72 establishes the criteria for continuing education providers.

Proposed new Subchapter I establishes the responsibilities of the Commission and the Department.

Proposed new §112.80 requires the Commission to adopt rules necessary to implement the Hearing Instrument Fitters and Dispensers program, including rules governing changes to the standards of practice rules.

Proposed new Subchapter J establishes the responsibilities of the licensee and the code of ethics.

Proposed new §112.90 specifies general responsibilities of the licensees.

Proposed new §112.91 requires all licensees to notify the Department of a change of name, address or other pertinent information.

Proposed new §112.92 details the information that all licensees must provide to clients and the public.

Proposed new §112.93 provides requirements regarding the display of the license.

Proposed new §112.94 prohibits false, misleading or deceptive advertising by licensees.

Proposed new §112.95 requires obtaining information on prospective candidates for amplification.

Proposed new §112.96 requires a license holder or permit holder to comply with federal regulations regarding hearing instruments.

Proposed new §112.97 establishes requirements regarding sound-level measurements, audiometers, and audiometric testing.

Proposed new §112.98 creates a code of ethics for this program.

Proposed new Subchapter L establishes fees for the Hearing Instrument Fitters and Dispensers program.

Proposed new §112.110 details all fees associated with the Hearing Instrument Fitters and Dispensers program as regulated by the Commission and the Department.

Proposed new Subchapter M creates a subchapter to address complaints.

Proposed new §112.120 provides that the Commission will adopt rules regarding complaints involving standard of care.

Proposed new Subchapter N establishes enforcement provisions.

Proposed new §112.130 allows for administrative penalties and sanctions.

Proposed new §112.131 provides the authority to enforce Texas Occupations Code, Chapter 402 and this chapter.

Proposed new §112.132 provides the authority to order refunds for returned hearing instruments.

Proposed new §112.133 allows for a civil penalty to be assessed against persons who violate this chapter.

Proposed new §112.134 requires a license holder or permit holder to surrender his or her license or permit to the Department on demand.

Proposed new Subchapter O establishes joint rules regarding the sale of hearing instruments. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the sale of hearing instruments.

Proposed new §112.140 details the requirements regarding the sale of hearing instruments.

Proposed new Subchapter P establishes joint rules for fitting and dispensing of hearing instruments by telepractice. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the fitting and dispensing of hearing instruments by telepractice.

Proposed new §112.150 details the requirements regarding the fitting and dispensing of hearing instruments by telepractice.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the Hearing Instrument Fitters and Dispensers program were appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the Department and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §112.1, §112.2

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.1. Authority.

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable.

#### §112.2. Definitions.

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

(1) Act--Texas Occupations Code, Chapter 402, concerning the licensing of persons authorized to fit and dispense hearing instruments.

(2) Advisory board--The Hearing Instrument Fitters and Dispensers Advisory Board.

(3) Applicant--An individual who applies for a license or permit under the Act.

(4) Apprentice permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, §402.207 and this chapter, and which authorizes the permit holder to fit and dispense hearing instruments under appropriate supervision from an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(5) Certification, proof of--A certificate of calibration, compliance, conformance, or performance.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Contact hour--A period of time equal to 55 minutes.

(8) Continuing education hour--A period of time equal to 50 minutes.

(9) Contract--See definition for "written contract for services."

(10) Continuing education--Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

(11) Continuing education provider--A provider of a continuing education activity.

(12) Department--The Texas Department of Licensing and Regulation.

(13) Direct supervision--The physical presence with prompt evaluation, review and consultation of a supervisor any time a temporary training permit holder is engaged in the act of fitting and dispensing of hearing instruments.

(14) Executive director--The executive director of the department.

(15) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

(16) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving, or correcting defective human hearing. The term includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(17) Indirect supervision--The daily evaluation, review, and prompt consultation of a supervisor any time a permit holder is engaged in the act of fitting and dispensing hearing instruments.

(18) License--A license issued by the department under the Act and this chapter to a person authorized to fit and dispense hearing instruments.

(19) Licensee--Any person licensed or permitted by the department under Texas Occupations Code Chapter 401 or 402.

(20) Manufacturer--The term includes a person who applies to be a continuing education provider who is employed by, compensated by, or represents an entity, business, or corporation engaged in any of the activities described in this paragraph. An entity, business, or corporation that:

(A) is engaged in manufacturing, producing, or assembling hearing instruments for wholesale to a licensee or other hearing instrument provider;

(B) is engaged in manufacturing, producing, or assembling hearing instruments for sale to the public;

(C) is a subsidiary of, or held by, an entity that is engaged in manufacturing, producing, or assembling hearing instruments as described in this definition;

(D) holds an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition; or

(E) serves as a buying group for an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition.

(21) Non-Manufacturer--Any person, entity, buyer group, or corporation that does not meet the definition of a manufacturer.

(22) Ownership of dispensing practice--A person who owns, maintains, or operates an office or place of business where the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments shall be considered also to be engaged in the practice of fitting and dispensing of hearing instruments under this Act.

(23) Person--An individual, corporation, partnership, or other legal entity.

(24) Sale or sell--A transfer of title or of the right to use by lease, bailment, or other contract. The term does not include a sale at wholesale by a manufacturer to a person licensed under the Act or to a distributor for distribution and sale to a person licensed under the Act.

(25) Selling of hearing instrument by mail--Any time a hearing instrument is not sold, fitted or dispensed in person by a license holder or permit holder.

(26) Specific Product Information--Specific product information shall include, but not be limited to, brand name, model number, shell type, and circuit type.

(27) Supervisor--A supervisor is an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312, and who meets the qualifications established by Texas Occupations Code, §402.255 and this chapter.

(28) Temporary training permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, Chapter 402, Subchapter F, and this chapter, to authorize the permit holder to fit and dispense hearing instruments only under the direct or indirect supervision, as required and as appropriate, of an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(29) Working days--Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(30) Written contract for services--A written contract between the license holder and purchaser of a hearing instrument as set out in §112.140 (relating to Joint Rule Regarding the Sale of Hearing Instruments).

(31) 30-day trial period--The period in which a person may cancel the purchase of a hearing instrument.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505908

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

### 16 TAC §§112.10 - 112.14

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.10. Membership.

The advisory board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) six members licensed under this chapter who have been residents of this state actually engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas Medical Board and who:

(A) has been a resident of this state for at least two years preceding appointment;

(B) is a citizen of the United States; and

(C) specializes in the practice of otolaryngology; and

(3) two members of the public.

§112.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

§112.12. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§112.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(b) The presiding officer shall preside at all meetings at which he or she is in attendance.

§112.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board action shall require a majority vote of those members present and voting.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505909

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179

◆ ◆ ◆  
SUBCHAPTER C. EXAMINATIONS

16 TAC §§112.20 - 112.26

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§112.20. Examination Requirements--General.

(a) Except as provided under subsection (b), an individual must pass an examination required by the department to qualify for a hearing instrument fitter and dispenser license or an apprentice permit under this chapter.

(b) An individual licensed under Chapter 401, as an audiologist or an audiology intern who is applying for a license under this chapter, is exempt from the examination required under this chapter but must comply with all other requirements under this chapter.

§112.21. Examination Qualifications.

(a) An applicant must qualify to take the written examination and the practical examination. The applicant must also take the Jurisprudence Examination as described under §112.26, but the applicant does not need to qualify to take the Jurisprudence Examination.

(b) The department will review an applicant's application and other submitted documentation as prescribed under §112.40 (apprentice permit) or §112.33 (out of state license) to determine whether the applicant qualifies to take the written and practical examinations.

(c) Pursuant to Texas Occupations Code §402.203(c), the department may refuse to examine an applicant who has been convicted of a misdemeanor that involves moral turpitude or a felony.

(d) The department or department's designee will notify the applicant who qualifies to take the examinations.

(e) An applicant must take and pass the examinations and complete all licensing requirements within one year after the date the application is received by the department.

§112.22. Examination Tests and Contents.

(a) The examination required under the Act shall consist of a written examination, a practical examination, and a Jurisprudence Examination as described under §112.26.

(b) The department shall administer or arrange for the administration of the examination.

(1) The written examination is the International Licensing Examination for Hearing Instrument Dispenser, a national examination administered by the International Hearing Society.

(2) The practical examination is administered by the department or the department's designee.

(3) The Jurisprudence Examination is developed by the department and administered by the department's designee.

(c) The examination under subsection (a), will test the following areas as they relate to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

- (2) structure and function of hearing instruments;
- (3) fitting of hearing instruments;
- (4) pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) live voice and recorded voice speech audiometry;
- (6) masking when indicated for air conduction, bone conduction, and speech;
- (7) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;
- (8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;
- (9) taking of earmold impressions;
- (10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;
- (11) anatomy and physiology of the ear;
- (12) post-counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;
- (13) use of an otoscope for the visual observation of the entire ear canal; and
- (14) laws, rules, and regulations of this state and the United States.

(d) The examination may not test knowledge of the diagnosis or treatment of any disease or of injury to the human body.

§112.23. Examination Scores and Results.

(a) The applicant must pass all parts of the examination with a score of 70 percent or greater.

(b) The department will notify the applicant in writing regarding the applicant's examination scores or results for the written and practical examinations. The department's designee will provide a certificate of completion to the applicant upon passage of the Jurisprudence Examination.

§112.24. Failure of Examination.

An applicant who fails the examination may retake the failed portion or portions of the examination after payment of an additional examination fee. An applicant must hold a current temporary training permit in order to be re-examined.

§112.25. Examination Proctors.

(a) The practical examination must be administered by one or more qualified proctors selected and assigned by the department.

(b) Qualifications for Examination Proctor.

(1) A proctor must be licensed in good standing as a hearing instrument fitter and dispenser under the Act.

(2) A proctor must have held the license for at least three years prior to the examination date.

(3) A proctor must have observed at least five full practical examination sessions prior to serving as a proctor.

(4) Disciplinary actions or other actions that may disqualify a license holder from serving as a proctor are:

(A) suspension or probated suspension under this chapter;

(B) any action requiring supervision by another person licensed under this chapter; or

(C) an administrative penalty or reprimand under this chapter within three years prior to the examination date.

§112.26. Jurisprudence Examination.

(a) To fulfill the requirements under Texas Occupations Code §402.204(b)(14), an applicant must pass the Jurisprudence Examination prescribed by the department.

(b) The Jurisprudence Examination is separate from the written and practical examinations under §112.22. The Jurisprudence Examination tests the applicant's knowledge of the laws, rules and regulations of Texas and of the United States relating to the fitting and dispensing of hearing instruments.

(c) The applicant must register online and pay the Jurisprudence Examination fee to the third-party provider. The applicant does not need to qualify through the department to take the Jurisprudence Examination.

(d) The applicant must successfully complete the Jurisprudence Examination and submit a certificate of completion prior to receiving a hearing instrument fitter and dispenser license or an apprentice permit.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505910

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER D. HEARING INSTRUMENT FITTER AND DISPENSER LICENSE

### 16 TAC §§112.30 - 112.33

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§112.30. Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the supervisor's agreement form that has been completed by the apprentice permit holder and the supervisor(s), unless previously submitted to the department;

(3) one of the following education records, unless previously submitted to the department;

(A) an official diploma or official transcript indicating graduation from high school;

(B) certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained; and

(4) the fee required under §112.110.

(d) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(e) The commission or executive director may deny an application based on the grounds for denial under Texas Occupations Code §402.501.

§112.31. Hearing Instrument Fitter and Dispenser License--Issuance of License.

(a) The department will issue each applicant, whose application has been approved, a license certificate containing the license holder's name, license number, and expiration date.

(b) Any license certificate or renewal card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or renewal card upon a written request from the license holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

(d) Upon the written request from the license holder using a department-approved form and payment of the duplicate/replacement fee under §112.110, the department will provide a license holder with a duplicate certificate for a second place of practice which is designated in a license holder's file.

§112.32. Hearing Instrument Fitter and Dispenser License--License Term; Renewals.

(a) A hearing instrument fitter and dispenser license is valid for two years after the date of issuance and may be renewed every two years.

(b) Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a hearing instrument fitter and dispenser license, a license holder must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete twenty (20) hours of continuing education as required under §112.70;

(4) comply with the continuing education audit process described under §112.71, if selected for an audit;

(5) provide proof that all equipment that is used by the license holder to produce a measurement in the testing of hearing acuity has been properly calibrated or certified by a qualified technician within one year prior to the renewal date; and

(6) submit the fee required under §112.110.

(d) The commission or department may deny the renewal of the license pursuant to Texas Occupations Code §402.501.

(e) Except as provided under subsection (d), a license that is not revoked or suspended shall be renewed provided that all other requirements are met.

(f) A person whose license has expired may renew the license in accordance with §60.31 and §60.83 of this title.

(g) A person whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(h) The department shall issue a renewal card to a license holder who has met all the requirements for renewal. The license holder must display the renewal card in association with the license.

§112.33. Application by License Holder From Another State.

(a) A person licensed to fit and dispense hearing instruments in another state may apply for a hearing instrument fitter and dispenser license under this chapter by meeting the requirements under this section.

(b) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(c) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(d) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state and has held the license for at least three years preceding the date of application;

(3) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed include passing the International Licensing Examination for Hearing Instrument Dispenser (ILE) written examination; or

(B) the applicant holds a certification issued by the Board of Certification for Hearing Instrument Sciences (BC-HIS); and

(4) a written statement from the licensing entity in the state in which the applicant is licensed that details any disciplinary action taken by the entity against the applicant; and

(5) a statement of the applicant's criminal history acceptable to the department.

(e) The department may deny an application under this section based on the applicant's criminal history or an applicant's history of disciplinary action.

(f) If the department approves an application, the applicant must take the practical examination and the Jurisprudence Examination required under §112.22 and §112.26. If the applicant passes the examinations required under this section, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(g) The department may allow an applicant under this section who satisfies all application requirements other than the requirement under subsection (d)(3), to take all sections of the examination required under Texas Occupations Code §402.202. If the applicant passes the examination, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(h) Pursuant to Texas Occupations Code §402.209(h), an applicant under this section who fails an examination may not retake the examination under this section. The person must comply with the requirements for an applicant for a temporary trainee permit.

(i) The department may not issue a license under this section to an applicant who is a licensed audiologist in another state. The department shall inform the applicant of the licensing requirements of Chapter 401.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505911

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER E. APPRENTICE PERMIT

### 16 TAC §§112.40 - 112.44

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.40. *Apprentice Permit--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for an apprentice permit must:

(1) hold a current temporary training permit;

(2) provide documentation that the applicant is at least 18 years of age;

(3) submit a completed application on a department-approved form;

(4) submit one of the following education records:

(A) an official diploma or official transcript indicating graduation from an accredited high school;

(B) certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained; and

(5) submit the supervisor's agreement form that has been completed by the applicant and the supervisor(s);

(6) pass all parts of the examination required under §112.22;

(7) submit a certificate of completion of the Jurisprudence Examination under §112.26; and

(8) pay the apprentice permit fee required under §112.110.

(d) An applicant for an apprentice permit must successfully pass a criminal history background check.

(e) The department will review the applicant's apprentice permit application and will notify the applicant who qualifies to take the examination.

(f) The applicant who qualifies to take the examination must comply with the examination requirements under Subchapter C, Examinations.

#### §112.41. *Apprentice Permit--Issuance of Permit.*

(a) The department will issue a permit containing the permit holder's name, permit number, and expiration date to an applicant who meets all of the requirements for obtaining an apprentice permit under the Act and this chapter.

(b) Any permit issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed permit upon a written request from the permit holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

#### §112.42. *Apprentice Permit--Permit Term; Extension.*

(a) An apprentice permit is valid for one year. The department may extend the apprentice permit for an additional period not to exceed one year.

(b) To extend an apprentice permit, the apprentice permit holder must:

(1) submit an extension request on a department-approved form;

(2) submit a new or renewed supervision agreement for the extension period; and

(3) pay the permit extension fee required under §112.110.

(c) A person whose permit has expired shall not practice the fitting and dispensing of hearing instruments.

§112.43. *Apprentice Permit--Supervision Requirements.*

(a) An apprentice permit holder shall work under the supervision of a license holder for at least one year.

(b) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(c) A supervisor of an apprentice permit holder is responsible for services to the client that may be performed by the apprentice permit holder. The supervisor must ensure that all services provided are in compliance with the Act and this chapter.

(d) The apprenticeship must be done under the supervision of an individual authorized to supervise permit holders who holds a valid license to fit and dispense hearing instruments in the State of Texas under Texas Occupations Code, Chapter 401 or 402, other than a person licensed under §401.311 or §401.312.

(e) The supervisor must submit written notification of cessation of supervision to the department and the apprentice permit holder within ten (10) days of cessation of supervision on a department-approved form or in a manner prescribed by the department.

(f) The apprentice permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor on a department-approved form or in a manner prescribed by the department.

(g) The supervisor's agreement form must be completed by the apprentice permit holder and the supervisor or supervisors on a department-approved form or in a manner prescribed by the department.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§112.44. *Apprentice Permit--Continuing Education.*

(a) Pursuant to Texas Occupations Code §402.207, the apprentice permit holder must complete twenty (20) hours of classroom continuing education during the apprentice year.

(b) The apprentice permit holder must complete the continuing education in one or more of the following approved subjects relating to the fitting and dispensing of hearing instruments:

- (1) basic physics of sound;
- (2) structure and function of hearing instruments;
- (3) fitting of hearing instruments;
- (4) pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) live voice and recorded voice speech audiometry;
- (6) masking when indicated for air conduction, bone conduction, and speech;
- (7) recording and evaluation of audiogram and speech audiometry to determine the candidacy for hearing instruments;
- (8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;
- (9) taking of earmold impressions;
- (10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;
- (11) anatomy and physiology of the ear;

(12) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal;

(14) laws, rules, and regulations of this state and the United States; and

(15) the proper procedures for sound level measurements.

(c) The apprentice must provide written proof of attendance or completion of an approved course on a department-approved form or in a manner prescribed by the department.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505912

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER F. TEMPORARY TRAINING PERMIT

### 16 TAC §§112.50 - 112.53

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§112.50. *Temporary Training Permit--Application and Eligibility Requirements.*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for a temporary training permit must:

(1) have never taken the examination administered under this chapter;

(2) provide documentation that the applicant is at least 18 years of age;

(3) submit a completed application on a department-approved form;

(4) submit one of the following education records:

(A) an official diploma or official transcript indicating graduation from an accredited high school;

(B) a certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained;

(5) submit the supervisor statement required under Texas Occupations Code §402.252, on a department-approved form; and

(6) pay the temporary training permit fee required under §112.110.

(d) An applicant for a temporary training permit must successfully pass a criminal history background check.

§112.51. Temporary Training Permit--Issuance of Permit.

(a) The department will issue a permit containing the permit holder's name, permit number, and expiration date to an applicant who meets all of the requirements for obtaining a temporary training permit under the Act and this chapter.

(b) Any permit issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed permit upon a written request from the permit holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

§112.52. Temporary Training Permit--Permit Term; Extension.

(a) A temporary training permit is valid for one year. The department may extend the temporary training permit for an additional period not to exceed one year. A temporary training permit may not be extended more than once.

(b) To extend a temporary training permit, the temporary training permit holder must:

(1) submit an extension request on a department-approved form;

(2) submit a new or renewed supervision agreement for the extension period; and

(3) pay the permit extension fee required under §112.110.

(c) A person whose permit has expired, shall not practice the fitting and dispensing of hearing instruments.

§112.53. Temporary Training Permit--Supervision and Temporary Training Requirements.

(a) The training of a temporary training permit holder must be done under the supervision of an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(b) A supervisor licensed under Texas Occupations Code, Chapter 401, shall comply with all provisions of Texas Occupations Code, Chapter 402, and this chapter that relate to the supervision and training of a temporary permit holder. A supervisor licensed under Texas Occupations Code, Chapter 402, shall comply with all provisions of the Act and this chapter.

(c) A person must obtain a temporary training permit prior to beginning the supervision and must maintain a valid temporary training permit during his or her supervised practicum experience.

(d) A temporary training permit holder only has the authority prescribed under Texas Occupations Code §402.256.

(e) The supervisor must submit a written notification of termination of supervision to the department and the temporary training permit holder within ten (10) days of cessation of supervision on a department-approved form or in a manner prescribed by the department.

(f) Pursuant to Texas Occupations Code §402.257, the temporary training permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor using a department-approved form or in a manner prescribed by the department.

(g) A temporary training permit holder shall have at least 150 hours of directly supervised practicum that shall include the following:

(1) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice, with 15 of the required hours being with actual clients;

(2) 25 client contact hours of hearing instrument evaluations, including sound-field measurements with recorded and live voice;

(3) 20 contact hours of instrument fittings with actual clients;

(4) 10 contact hours of earmold orientation types, uses, and terminology;

(5) five contact hours of earmold impressions and otoscopic examinations of the ear;

(6) 15 contact hours of troubleshooting of defective hearing instruments;

(7) 20 contact hours of case history with actual clients;

(8) 10 contact hours regarding the laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(9) 20 contact hours of supplemental work in one or more of the areas described by paragraphs (1) through (8).

(h) Pursuant to Texas Occupations Code §402.254, in addition to the contact hours under subsection (g), a temporary training permit holder shall complete at least 10 contact hours of masking under the direct supervision of the supervisor.

(i) Pursuant to Texas Occupations Code §402.255(d), the supervisor shall maintain a log of the contact hours by practicum category on a form and in a manner prescribed by the department. After the temporary training permit holder has completed the 150 contact hours under subsection (g), the supervisor and the permit holder shall sign the form, and the form shall be notarized and mailed to the department.

(j) Pursuant to Texas Occupations Code §402.255(e), a supervisor may not supervise more than two temporary training permit holders at one time.

(k) A supervisor may delegate training activities of a temporary training permit holder to another license holder. The supervisor shall be responsible for the day-to-day supervision of a temporary training permit holder. The supervisor shall also be ultimately responsible for services provided to a client by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

(l) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505913

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER G. FINANCIAL SECURITY REQUIREMENTS

### 16 TAC §112.60, §112.61

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.60. Filing Surety Bond or Other Form of Financial Security.

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments must file with the department financial security in a form provided by subsection (b), in the amount of \$10,000 and conditioned on the promise to pay all:

(1) taxes and contributions due to the state and political subdivisions of the state by the sole proprietor, partnership, corporation, or other legal entity; and

(2) judgments that the sole proprietor, partnership, corporation, or other legal entity may be required to pay for negligently or improperly dispensed hearing instruments or for breaching a contract relating to the dispensing of hearing instruments.

(b) A sole proprietor, partnership, corporation, or other legal entity must file with the department one of the following acceptable forms of financial security in the amount required in subsection (a):

(1) a surety bond issued by an authorized entity;

(2) a deposit of cash;

(3) a certificate of deposit that is issued by a qualified financial institution, assigned to the executive director, and for the benefit of the department; or

(4) an original letter of credit acceptable to the department that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the license holder;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the license holder or other party.

(c) The surety bond or other accepted form of financial security must be received on or before the date of issuance of the license.

(d) A person to whom the Act does not apply pursuant to Texas Occupations Code §402.003 is not required to file a bond under this section.

(e) Financial security required under this section remains in effect until canceled by action of the surety, the principal, or the department. Notice of cancellation must be provided to the department no later than thirty (30) days prior to cancellation.

#### §112.61. Recovery on Surety Bond or Other Form of Financial Security.

(a) The purchaser of a hearing instrument may rescind the purchase and recover funds as provided by Texas Occupations Code §402.404 and §402.405.

(b) The purchaser of a hearing instrument must file a claim with the department to recover funds from the financial security submitted to the department under §112.60.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505914

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

### 16 TAC §§112.70 - 112.72

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.70. Continuing Education--Hours and Courses.

(a) This section applies to a hearing instrument fitter and dispenser license holder.

(b) A license holder must complete 20 continuing education hours of continuing education during each two-year renewal period. A two-year renewal period begins on the first day after the previous license expiration date and ends on the new license expiration date.

(c) Pursuant to 16 Texas Administrative Code (TAC), Chapter 59, a continuing education hour shall be 50 minutes of attendance in an approved continuing education course.

(d) No more than 10 continuing education hours per renewal period may be earned from an approved online continuing education course offered by an approved continuing education provider.

(e) No more than 5 continuing education hours per renewal period may be earned from an approved continuing education course offered by an approved manufacturer continuing education provider.

(f) Pursuant to Texas Occupations Code §402.304, a license holder may take all three parts of the licensing examination referenced under §112.22, on written request to the department. A license holder who pays the examination fees and passes the examination is exempt from the continuing education requirement for the renewal period in which the examination is taken.

(g) A license holder may be credited with continuing education hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The department may approve credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments. No more than 5 contact hours per renewal period may be approved for preparation of a publication.

(h) Continuing education shall be acceptable if the education is described in subsection (f) or (g), or falls in one or more of the following categories:

(1) participation in approved continuing education courses offered by approved continuing education providers;

(2) completion of academic courses at an accredited college or university in areas directly supporting development of skills and competence in the fitting and dispensing of hearing instruments; and/or

(3) participation or teaching in programs directly related to the fitting and dispensing of hearing instruments (e.g., institutes, seminars, workshops, or conferences), which are approved or offered by an accredited college or university.

(i) To receive credit for completion of academic work the license holder must submit an official transcript(s) from accredited school(s) showing completion of hours in appropriate areas for which the license holder received a passing grade.

(j) The department will not approve continuing education credit for any license holder for:

(1) education incidental to the regular professional activities of a license holder such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization; and

(3) any program which is not described in, or in compliance with, this section.

(k) Pursuant to Texas Occupations Code §402.305, the department may renew the license of a license holder who has not complied with the continuing education requirements if the license holder:

(1) has served in the regular armed forces of the United States during any part of the twenty-four (24) months before the end of the two-year renewal period;

(2) submits proof from an attending physician that the license holder suffered a serious disabling illness or physical disability that prevented compliance with the continuing education requirements during the twenty-four (24) months before the end of the two-year renewal period; or

(3) was licensed for the first time during the twenty-four (24) months before the end of the two-year renewal period.

§112.71. Continuing Education--Records and Audits.

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A license holder who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until the continuing education requirements have been met.

(c) The license holder shall be responsible for maintaining a record of his or her continuing education experiences until the next renewal is completed.

§112.72. Continuing Education--Providers.

(a) In accordance with the Act, continuing education courses must be provided by a department-approved continuing education provider. An individual or organization may request approval as a continuing education provider by submitting an application to the department. The department may consult as needed with an advisory board member.

(b) After review of the continuing education provider application, the applicant may be approved by the department as either a manufacturer continuing education provider or a non-manufacturer continuing education provider.

(c) Upon approval, the continuing education provider applicant shall pay the continuing education provider fee prescribed under §112.110. The approved provider status shall be effective for one year from the date of issuance of provider approval.

(d) Continuing education providers must renew their approved provider status annually by completing and returning to the department the provider renewal form and the continuing education provider fee. If not renewed on or before the expiration date, the continuing education provider must reapply for approved sponsor status.

(e) Each continuing education course offered by an approved provider must be submitted to the department on the required course approval form.

(f) The department is responsible for the review and approval of all continuing education courses submitted by approved providers. The department may consult as needed with an advisory board member.

(g) Each continuing education course will be evaluated by the department on the basis of the following criteria:

(1) relevance of the subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in studies or disciplines related to fitting and dispensing of hearing instruments;

(2) objectives of specific information and skills to be learned; and

(3) subject matter, educational methods, materials, qualifications of instructors and presenters, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives.

(h) Approved providers who offer online continuing education must submit each course for approval.

(i) Approved continuing education courses and providers will be listed on the department's website.

(j) An organization or individual who meets the required criteria and is approved by the department may advertise as an approved provider of continuing education for licensed fitters and dispensers of hearing instruments.

(k) Each continuing education provider shall provide each participant with a certificate of completion that documents the participant's name, the continuing education course number, the number of approved continuing education hours, the title and date(s) of the program as approved by the department, and the name of the approved continuing education provider.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505915  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 463-8179



## SUBCHAPTER I. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

### 16 TAC §112.80

The new rule is proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.80. Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Hearing Instrument Fitters and Dispensers program. Pursuant to §60.22 of this title, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules unless proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505916  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 463-8179



## SUBCHAPTER J. RESPONSIBILITIES OF THE LICENSEE

### 16 TAC §§112.90 - 112.98

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.90. General Responsibilities of the Licensee.

(a) All licensees are bound by the provisions of the Act and this chapter.

(b) A licensee shall report alleged violations of the Act or this chapter to the department.

(c) A licensee shall cooperate with the department by furnishing required documents or information and by responding to a request for information from a subpoena issued by the executive director or the department.

(d) A licensee shall comply with any order issued by the commission or the department relating to the licensee.

(e) A licensee shall not interfere with an investigation by the willful misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

§112.91. Change of Name, Address or Other Information.

A licensee must notify the department in writing within thirty (30) days of any changes of name, address, telephone number, or employment.

§112.92. Consumer Information.

A licensee shall inform each client of the name, address, email address, and telephone number of the department for the purpose of filing a complaint or reporting violations of the Act or this chapter on:

- (1) each written contract for services; and
- (2) a sign prominently displayed in the primary place of business.

§112.93. Display of License.

(a) A licensee shall:

- (1) prominently display the current license issued by the department in the primary place of business;
- (2) not display a license issued by the department which has been reproduced or is expired, suspended, or revoked; and
- (3) not make any alterations on a license issued by the department.

(b) The department shall issue a renewal card to a licensee who has met all the requirements for renewal. The licensee must display the renewal card in association with the license.

§112.94. False, Misleading or Deceptive Advertising.

A licensee may not engage in false, misleading or deceptive advertising in accordance with Texas Occupations Code §402.103.

§112.95. Information on Prospective Amplification Candidates.

A license holder shall obtain information on each prospective candidate for amplification in accordance with Texas Occupations Code §402.352.

§112.96. Conditions of Sale.

A license holder or permit holder shall comply with the federal regulations adopted by the U.S. Food and Drug Administration at Title 21 Code of Federal Regulations §801.420 and §801.421. A link to the federal regulations will be available online through the department's website.

§112.97. Sound-Level Measurements - Audiometers and Audiometric Testing.

(a) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute (ANSI) or the International Electrotechnical Commission.

(b) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure. Sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current ANSI "ear covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing, or the test environment shall have a maximum allowable ambient noise level of 42 dBA.

(2) Ambient noise level of the location of the audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) type(s) of equipment used to determine ambient noise level;

(B) model and serial number of equipment used to determine ambient noise level;

(C) date of last calibration of equipment used to determine ambient noise level; and

(D) the ambient noise level of the test environment.

(c) Audiometric testing conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.

(2) A stationary acoustical enclosure includes, but is not limited to, an audiometric test room.

(A) An audiometric test room is any enclosed space in which a listener is located for the purpose of testing hearing. An audiometric test room may also be known as:

(i) an audiometric test area;

(ii) a hearing test space; or

(iii) a hearing test room.

(B) An example of an audiometric test room would be a prefabricated room known as:

(i) an audiometric test booth;

(ii) a suite; or

(iii) a sound treated room.

§112.98. Code of Ethics.

(a) The purpose of this section is to establish the standards of professional and ethical conduct required of a license holder or permit holder and constitutes a code of ethics. It is the responsibility of all license holders and permit holders to uphold the highest standards of integrity and ethical principles.

(b) A license holder or permit holder of hearing instruments must observe and comply with the code of ethics and standards of practice set forth in this chapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits the profession of the dispensing and fitting of hearing instruments and is grounds for disciplinary action.

(c) A license holder or permit holder shall:

(1) offer only those services that are within his or her professional competency;

(2) comply with client confidentiality rights within the limits established by the law;

(3) refer a client for those services that the license holder or permit holder is unable to provide;

(4) comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(5) ensure that all equipment used is in proper working order and is properly calibrated; and

(6) comply with any order relating to the license holder or permit holder which is issued by the commission or executive director.

(d) A license holder or permit holder shall not:

(1) falsify records;

(2) refuse to provide services solely on the basis of a client's age, gender, race, color, religion, national origin, or disability;

(3) misrepresent his or her professional credentials and/or qualifications;

(4) engage in sexual contact or sexual exploitation with a client. Sexual contact means the behaviors and activities described in the Texas Penal Code, §21.01 (relating to Sexual Offenses; Definitions). Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal, sexual gratification, or sexual abuse;

(5) provide services while impaired due to the use of medication, drugs, or alcohol, or a physical or mental health condition; or

(6) interfere with an investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or the department's designee or by the use of threats or harassment against any person.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505917

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER L. FEES

### 16 TAC §112.110

The new rule is proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.110. Fees.

(a) Fees paid to the department are nonrefundable.

(b) Hearing Instrument Fitter and Dispenser License:

(1) Initial application fee (includes two-year initial license)--\$205;

(2) Renewal application fee (for two-year license)--\$205.

(c) Apprentice Permit:

(1) Initial application fee (includes one-year permit)--\$205;

(2) Extension fee (one-year term, may only be extended once)--\$25.

(d) Temporary Training Permit:

(1) Initial application fee (includes one-year permit)--\$205;

(2) Extension fee (one-year term, may only be extended once)--\$25.

(e) Examination Fees:

(1) Initial practical examination fee--\$100;

(2) Retake practical examination fee--\$100;

(3) Jurisprudence Examination fee--the fee in the amount charged by the department's designee.

(f) Continuing education provider fee--\$200 annually.

(g) A duplicate/replacement fee for a license or permit issued under this chapter is \$25.

(h) Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(i) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(j) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505918

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER M. COMPLAINTS

### 16 TAC §112.120

The new rule is proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.120. Complaints Regarding Standard of Care.

The commission will adopt rules related to handling complaints regarding standards of care pursuant to Texas Occupations Code §51.2031.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505919  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 463-8179



## SUBCHAPTER N. ENFORCEMENT PROVISIONS

### 16 TAC §§112.130 - 112.134

The new rules are proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.130. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 402, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 402 and any associated rules.

#### §112.131. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 402 and any associated rules may be used to enforce Texas Occupations Code, Chapter 402 and this chapter.

#### §112.132. Refund for Hearing Instrument.

The commission or executive director may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period described in the Act and in this chapter.

#### §112.133. Civil Penalty.

(a) A person who violates this chapter or a rule adopted or order issued under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) An action under this section shall be implemented in accordance with Texas Occupations Code §51.352, Injunctive Relief, Civil Penalty.

#### §112.134. Surrender of a License or Permit.

(a) Surrender by license holder or permit holder.

(1) A license holder or permit holder may at any time voluntarily offer to surrender his or her license or permit for any reason.

(2) If no complaint is pending, the executive director shall accept and void the surrendered license or permit immediately.

(b) Formal disciplinary action.

(1) When a license holder or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the executive director shall accept and void the surrendered license or permit immediately.

(2) When the executive director has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and an order accepting the surrender may be prepared.

(c) Reinstatement. A license or permit which has been surrendered may not be reinstated; however, a person may apply for a new license or permit in accordance with the Act and this chapter.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505920  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 463-8179



## SUBCHAPTER O. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS

### 16 TAC §112.140

The new rule is proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.140. Requirements Regarding the Sale of Hearing Instruments.

(a) This subchapter constitutes the rules required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the commission with the assistance of the Speech-Language Pathology and Audiology Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board. The requirements of this subchapter shall be repealed or amended only through consultation with, and mutual action by, both advisory boards.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the department.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition to the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive day trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license or permit holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice;"

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder, you may contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone (512) 463-6599, Toll-Free (in Texas): (800) 803-9202, www.tdlr.texas.gov";

(9) the printed name, license type, signature and license or permit number of the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder who dispensed the hearing instrument;

(10) the supervisor's name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within thirty (30) days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b); and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the department's inspection and shall include, but are not limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this subchapter, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505921

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

### 16 TAC §112.150

The new rule is proposed under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the proposal.

§112.150. Requirements Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice.

(a) Pursuant to Texas Occupations Code §401.2022 and §402.1023, the commission, with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, shall adopt rules to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. This subchapter contains rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Client--A consumer or proposed consumer of services.

(3) Client site--The site at which the client is physically located.

(4) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(5) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(6) Provider--An individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision; an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, §401.302; or an individual who holds an audiology intern license under Texas Occupations Code, §401.311.

(7) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(8) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(9) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(10) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(11) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

(c) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the state of Texas, unless the individual qualifies as a provider as that term is defined in this section and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this subchapter.

(d) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(e) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(f) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(g) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(h) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption is required by law; and

(2) those tasks for which the individual who is acting as a facilitator otherwise holds and acts in accordance with any license, permit, or other form of authorization or exemption required by law to perform the tasks.

(i) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(j) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(k) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(l) A client's initial professional contact with a provider shall be in person at the same physical location.

(m) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(n) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505922

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## CHAPTER 114. ORTHOTICS AND PROSTHETICS

### **16 TAC §§114.1, 114.10, 114.20 - 114.30, 114.40, 114.50, 114.65 - 114.70, 114.80, 114.90, 114.95**

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 114, §§114.1, 114.10, 114.20, 114.21, 114.22, 114.23, 114.24, 114.25, 114.26, 114.27, 114.28, 114.29, 114.30, 114.40, 114.50, 114.65, 114.66, 114.67, 114.68, 114.69, 114.70, 114.80, 114.90 and 114.95, regarding the Orthotics and Prosthetics program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 114 are necessary to implement S.B. 202 and to regulate the Orthotics and Prosthetics program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 821, regarding the Orthotics and Prosthetics program, which are still in effect.

The Department's Orthotists and Prosthetists Advisory Board met on November 16, 2015, to consider a draft of these rules and recommended proposing them in the *Texas Register* for public comment.

Proposed new §114.1 establishes the authority to administer and enforce this chapter.

Proposed new §114.10 creates the definitions to be used in this chapter.

Proposed new §114.20 develops the application guidelines for this program.

Proposed new §114.21 determines when a license or registration is required and explains the applicable process.

Proposed new §114.22 establishes the licensing examination for a Prosthetist, Orthotist, or Prosthetist/Orthotist license.

Proposed new §114.23 creates the requirements for a uniquely qualified person to obtain a license as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

Proposed new §114.24 details the academic and residency requirements for those seeking to obtain a license as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

Proposed new §114.25 establishes the terms for temporary licenses.

Proposed new §114.26 explains student registration.

Proposed new §114.27 details the assistant license requirements.

Proposed new §114.28 establishes the requirements for the technician registration.

Proposed new §114.29 provides the requirements for a facility to be accredited.

Proposed new §114.30 creates professional clinical residency requirements.

Proposed new §114.40 details the renewal requirements and process for licensees, registrants and accredited facilities.

Proposed new §114.50 establishes continuing education requirements for the program.

Proposed new §114.65 creates the membership requirements for the Orthotists and Prosthetists Advisory Board.

Proposed new §114.66 explains the duties of the Orthotists and Prosthetists Advisory Board.

Proposed new §114.67 establishes the terms and vacancies process for the Orthotists and Prosthetists Advisory Board.

Proposed new §114.68 provides for a presiding officer of the Orthotists and Prosthetists Advisory Board.

Proposed new §114.69 explains meeting requirements for the Orthotists and Prosthetists Advisory Board.

Proposed new §114.70 creates responsibilities for licensees.

Proposed new §114.80 establishes fees that apply to this program.

Proposed new §114.90 creates professional standards for the program and details the basis for disciplinary action.

Proposed new §114.95 provides information regarding complaints.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the Orthotics and Prosthetics program were appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the Department and provide details that are not found in the enabling act. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51 and 605, which authorize the Commission, the Department's governing body, to adopt rules as necessary to imple-

ment these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposal.

§114.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 605.

§114.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in this chapter:

(1) Act--The Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605.

(2) Advisory board--The Orthotists and Prosthetists Advisory Board.

(3) Ancillary patient care service--Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events.

(4) Assistant patient care service--Includes comprehensive orthotic patient care (initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of custom fitted and off-the-shelf orthotic devices) involving pedorthics, compression garments, non-custom fabricated orthoses (except those used to treat scoliosis or an unstable fracture or dislocation), and knee orthoses; and comprehensive prosthetic care involving compression garments, when provided under the appropriate supervision of a practitioner licensed in the practice area in which the service is being provided.

(5) Board--The Orthotists and Prosthetists Advisory Board.

(6) CAAHEP--The Commission on Accreditation of Allied Health Education Programs.

(7) Clinical residency for an assistant--An assistant-level experience of at least 1,000 hours directly supervised by a practitioner.

(8) Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner.

(9) Commission--The Texas Commission of Licensing and Regulation.

(10) Critical care events--Initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of the custom-fabricated prosthesis or orthosis.

(11) Department--The Texas Department of Licensing and Regulation.

(12) Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery.

(13) Executive director--The executive director of the department.

(14) Extensive orthotic practice--Includes the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions; the taking of measurements and impressions

of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthosis including plastic forming, metal contouring, cosmetic covering, and assembling; the fitting and assessment of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the training and instruction of patients in the use and care of the orthosis; and maintaining current encounter notes and patient records.

(15) Extensive prosthetic practice--Includes the evaluation of patients with a wide range of upper and lower limb deficiencies; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, assembly, and aligning; the fitting and assessment of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the training and instruction of patients in the use and care of the prosthesis; and maintaining current encounter notes and patient records.

(16) Indirect supervision--Supervision provided to a licensed assistant or to a person in clinical residency for a professional by a practitioner who provides appropriate on-site supervision as approved by the accredited facility's practitioner in charge.

(17) License--Includes a license, registration, certificate, or other authorization issued under the Act to engage in an activity regulated under the Act, excluding accreditation of a facility.

(18) Licensed physician--A physician licensed and in good standing with the Texas Medical Board.

(19) Licensee--Includes a person holding a current license or registration issued by the department, to engage in an activity regulated under the Act.

(20) NCOPE--The National Commission on Orthotic and Prosthetic Education.

(21) Off-the-shelf--A prescribed, prefabricated orthosis that requires minimal self-adjustment by the patient or by a personal caregiver(s) for appropriate use and does not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

(22) Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(23) Orthotist in charge--An orthotist who is designated on the application for accreditation as the person who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of orthotics in the facility.

(24) Patient education--Patient education involves information, instructions, training, and review for understanding that are provided to the patient or caregiver, including donning, doffing, use, care, sanitation, spinal and cranial orthotic training, upper extremity orthotic and prosthetic training, lower extremity orthotic and prosthetic gait training, normal wear and tear, schedule for continuing care, and indications for return to physician.

(25) Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(26) Practitioner in charge--The orthotist in charge, the prosthetist in charge, or the prosthetist/orthotist in charge.

(27) Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(28) Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(29) Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the person who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(30) Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the person who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(31) Registered orthotic technician--A person registered under the Act who fabricates, assembles, or services orthoses under the direction of a licensed orthotist, licensed prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(32) Registered prosthetic technician--A person registered under the Act who fabricates, assembles, or services prostheses under the direction of a licensed prosthetist, licensed prosthetist/orthotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(33) Registered prosthetic/orthotic technician--A person registered under the Act who fabricates, assembles, or services prostheses and orthoses under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(34) Safety manager--An employee of an accredited facility who is assigned to develop, carry out and monitor an accredited facility's safety program.

(35) Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

(36) Voluntary charity care--The practice of a licensed practitioner without compensation or expectation of compensation.

#### §114.20. Applications.

(a) Unless the context clearly indicates otherwise, use of the terms license, licensure, and licensing shall apply to both licenses and registrations.

(b) Materials submitted in the licensure process become the property of the department and are not returnable.

(c) Unless otherwise indicated an applicant must submit the following, as applicable to the license type for which the person is applying:

(1) a completed application on a department-approved form;

(2) official transcript(s) or certificates of all relevant college courses, degrees, and residencies showing successful completion of the applicable requirements under the Act and this chapter;

(3) the department-approved form providing information regarding other state licenses, certificates or registrations that an applicant holds or held, if applicable; and

(4) the fee required under §114.80.

(d) The department will accept as proof of completion of a degree or course work an official transcript from a regionally accredited college or university. Foreign transcripts must be submitted with an evaluation from World Education Services (WES), or another provider approved by the department, that demonstrates equivalency of the foreign degree or coursework with a U.S. degree or coursework.

(e) Uniquely qualified applicants for a practitioner license shall submit department reference forms from a total of two physicians, practitioners, or persons licensed or certified by a state or by a national organization in orthotics or prosthetics who can attest to the applicant's skills and professional standards of extensive prosthetic or orthotic practice.

(f) All applicants for initial licensure and for every other renewal cycle must submit proof of successful completion of the Texas Jurisprudence Examination required under §114.21, at the time of application.

(g) The applicant must successfully pass a criminal history background check.

(h) Disapproved applications. The department may disapprove an application if the applicant:

(1) has failed or refused to properly complete or submit application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form or other form or documentation required by the department to verify the applicant's qualifications for a license;

(2) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;

(3) has made or filed a false report or record made in the person's capacity as a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, prosthetist/orthotist assistant, prosthetic technician, orthotic technician, or prosthetic/orthotic technician;

(4) has failed to file a report or record required by law;

(5) has obstructed or induced another to obstruct the filing of a report or record required by law;

(6) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice as established by the department in §114.90;

(7) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of a physical or mental condition or illness or drug or alcohol dependency.

(8) has failed to report a known violation of the Act to the department;

(9) has violated a provision of the Act, a rule adopted under the Act, or an order issued by the executive director or the commission;

(10) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs due to fraudulent activities;

(11) has committed a prohibited act under the Act, §§605.351 - 605.353; or

(12) fails to meet department standards for the license for which the applicant is applying developed in accordance with Chapter 53, Occupations Code, relating to criminal history.

§114.21. Licenses and Licensing Procedures.

(a) Unless the context clearly indicates otherwise, use of the terms license or licenses shall apply to both licenses and registration, and the term licensee shall apply to both licensees and registrants.

(b) Jurisprudence examination. The Texas Jurisprudence Examination content is based on the Act, the rules of the department, and other state and federal laws and rules that relate to the practice of orthotics and prosthetics.

(1) All applicants for initial licensure and for every other renewal cycle must complete the applicable jurisprudence examination before applying for a license.

(2) The jurisprudence examination must have been completed no more than six months prior to the licensure or renewal application date.

(3) Applicable fees are paid directly to the vendor for the jurisprudence examination.

(c) Term of license.

(1) A license or registration shall be issued for a two year period.

(2) A temporary license shall be issued for a one year period, and may be renewed for one additional one year period.

(3) A student registration shall be issued for a two-year period, and may be renewed for one additional two year period.

(d) Licenses issued by the department remain the property of the department and must be surrendered to the department on demand.

(e) Licenses shall be displayed appropriately and publicly as follows:

(1) The license shall be displayed in the primary office or place of employment of the licensee.

(2) Lacking a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry the license, or obtain duplicate licenses to display at each location.

(3) No person shall display or carry a copy of a license instead of the original document.

(f) A licensee shall only allow his or her license to be copied for licensure verification by employers, licensing boards, professional organizations and third party payers for credentialing and reimbursement purposes. The licensee shall sign, date and clearly mark copies with the word "COPY" across the face of the document.

(g) License alterations. No person shall make alterations to a license or to a copy of a license.

§114.22. Examination for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Except as provided by §114.23, an applicant must pass a competency examination to qualify for a practitioner license.

(b) Examinations shall be offered in prosthetics or orthotics.

(c) To take the examination, the applicant must have been:

(1) issued a student registration; or

(2) approved by the department.

(d) Approved applicants shall have no more than two years from the date of approval to pass the required examination(s).

(e) Applications for examination.

(1) The department shall notify an applicant whose license application has been approved that the applicant is eligible for the examination.

(2) The department or its designee shall forward an examination registration form to the approved applicants at least thirty (30) days before a scheduled examination. An applicant who wishes to take a scheduled examination must complete the registration form and return it to the department or its designee by the established deadline.

(f) Locations. Examinations administered by the department or its designee will be held at locations to be announced by the department or its designee.

(g) Frequency. The examinations shall be administered at least once each year.

(h) Grading. The department shall establish cut scores and shall grade examinations administered by the department or its designee.

(i) Results.

(1) If the examination is graded or reviewed by a national or state testing service, the department shall notify the examinees of the examination results within fourteen (14) days of the date the department receives the results from the testing service.

(2) If examination results will be delayed for more than ninety (90) days after the examination, the department shall notify the applicants of the reason for the delay before the ninetieth day.

(j) Examination failure. Upon written request, the department shall furnish an applicant who fails an examination an analysis of performance.

§114.23. Requirements for Uniquely Qualified Person Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Purpose. The purpose of this section is to describe the unique qualifications a person must possess to qualify for licensure as a prosthetist, orthotist or prosthetist/orthotist under the Orthotics and Prosthetics Act (Act), §605.254(a)(2).

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is qualified to perform prosthetic or orthotic care.

(c) The department will determine whether a person is uniquely qualified on a case-by-case basis based on the information supplied by the applicant and other information deemed relevant by the department.

(d) Applicants may apply for licensure as a uniquely qualified person in accordance with paragraph (1), (2), or (3):

(1) Applicants with at least fifteen (15) years of extensive orthotic or prosthetic experience in the discipline for which they have applied. These applicants must demonstrate proof of having taken at least seventy-five (75) hours of continuing education that meets the requirements of §114.50, within the five years before application.

(2) Applicants with at least fifteen (15) years of extensive orthotic experience and fifteen years of extensive prosthetic experience who are applying for the prosthetist/orthotist license. These applicants may accumulate extensive orthotic experience concurrently with the accumulation of extensive prosthetic experience. These applicants must demonstrate proof of having taken at least one hundred (100) hours of continuing education that meets the requirements of §114.50, in both orthotics and prosthetics, within the five years before application.

(3) Applicants who meet the academic requirements under §114.24, but who have not completed a professional clinical residency meeting NCOPE requirements. These applicants shall submit proof of at least two years of applicable orthotic or prosthetic experience within the five years before application that was obtained under supervision of a licensed or certified orthotist or prosthetist in the discipline for which they have applied.

(e) The following is applicable to persons applying for licensure under paragraphs (d)(1) and (2).

(1) The practitioner with extensive orthotic practice experience must, within the limits set by the department, demonstrate application of all of the elements of extensive orthotic practice, as defined in §114.10(14), to at least two-thirds of the following types of orthoses: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(2) The practitioner with extensive prosthetic practice experience must, within the limits set by the department, demonstrate application of the elements of extensive prosthetic practice, as defined in §114.10(15), to at least two-thirds of the following types of prostheses: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(f) Applicants who meet the requirements of this section but for whom a determination under this section is inconclusive may be required to pass the practitioner exam required under §114.22, to demonstrate unique qualifications for a practitioner license.

§114.24. Requirements for Licensure by Examination as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Applicants for the orthotist license must complete the orthotist academic, residency, and examination requirements for orthotists. Applicants for the prosthetist license must complete the prosthetist academic, residency, and examination requirements for prosthetists. Applicants for the prosthetist/orthotist license must complete the prosthetist and orthotist academic, residency, and examination requirements.

(b) Academic requirements for an orthotist, prosthetist, or prosthetist/orthotist license. The applicant must hold a bachelor's or graduate degree:

(1) in prosthetics and orthotics from a college or university educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) while the applicant attended the program or a college or university educational program accepted by the department as having educational standards equal to or exceeding CAAHEP standards; or

(2) in any subject and a certificate from an orthotics, prosthetics, or both an orthotics and prosthetics practitioner educational program, as applicable to the license type for which the person is applying, that is accredited by CAAHEP while the applicant attended the program, or from a practitioner education program accepted by the department as having educational standards equal to or exceeding CAAHEP standards.

(c) Post-graduate requirements for the orthotist, prosthetist, or prosthetist/orthotist license.

(1) The applicant must submit a completion certificate from a NCOPE orthotic, prosthetic, or both an orthotic and prosthetic residency program, as applicable to the license type for which the person is applying, or from a residency program or programs approved by the department.

(2) If any of the clinical requirements are completed in Texas, the supervising orthotist(s), prosthetist(s), or prosthetist/orthotist(s) must be licensed in accordance with this chapter.

§114.25. Temporary License for Practitioners.

(a) A temporary license may be issued under this section to a person who:

(1) has become a Texas resident as defined in §114.10(35), within the twelve (12) month period preceding application for a temporary license;

(2) has applied for a practitioner license; and

(3) has practiced orthotics or prosthetics or both regularly since January 1, 1996 or earlier; or

(4) has been licensed by the state in which the person formerly resided if that state has license requirements that are equal to or exceed the requirements of this chapter.

(b) A temporary license is valid for one year from the date issued unless the applicant is not approved by the department for a practitioner license.

(c) If the practitioner application is not approved by the department, the temporary license is no longer valid and shall be surrendered to the department within fifteen (15) days of the notice of denial.

§114.26. Student Registration.

(a) Student registration provides authorization for a person to practice prosthetics or orthotics while fulfilling the postgraduate requirements for licensure by examination.

(b) Eligibility. The department shall issue or renew a student registration certificate if the applicant:

(1) has applied for student registration on department-approved forms;

(2) has paid the student registration fee; and

(3) either:

(A) has completed the academic requirements for a practitioner license; or

(B) is a student who is currently enrolled in a graduate program in this state in orthotics and prosthetics that is recognized and accredited by CAAHEP and submits to the department a written certification from the graduate program in which the student is enrolled that the student has successfully completed the academic prerequisites to enter a professional clinical residency; and

(4) is actively engaged in either:

(A) completing a professional clinical residency; or

(B) applying for or awaiting the results of the examination, and has completed the professional clinical residency.

(c) An applicant may be issued an initial student registration in each area: prosthetics, orthotics, or both, depending on the type of clinical residency.

(d) The applicant shall apply for a student registration before beginning the professional clinical residency.

(e) A person becomes eligible to take the state examination when the department issues the student registration.

(f) A student registration may be upgraded to a practitioner license after the applicant:

(1) meets the requirements of §114.24;

(2) passes the appropriate examination; and

(3) submits a complete license upgrade form and fee.

§114.27. Assistant License.

(a) Qualifications. The applicant must submit evidence satisfactory to the department of having successfully completed either (1) and (2), or (1) and (3), of the following:

(1) Coursework from a college or university accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools that included at a minimum:

(A) eight (8) credit hours of anatomy and physiology;

(B) three (3) credit hours of medical terminology;

(C) three (3) credit hours of physics.

(2) For applicants for a prosthetic assistant or orthotic assistant license, a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, respectively, completed in a period of not more than one year, in a facility that is accredited under §114.29, or its equivalent, as approved by the department, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(3) For applicants for the prosthetic/orthotic assistant license, a clinical residency for assistants of not less than 1,500 hours in prosthetics and orthotics, completed in a period of not more than one year, in a facility that is accredited under §114.29, or its equivalent, as approved by the department, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(b) Clinical residency for an assistant.

(1) Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the department by filing a completed supervision agreement with the department with the clinical resident's application for licensure as an assistant and the required fee.

(2) The supervisor shall not allow the clinical residency to begin until approval from the department is received.

(3) The supervisor shall provide the clinical resident and the department with written documentation upon beginning, terminating or completing a clinical residency.

(4) The resident shall practice under the direct supervision of a licensed practitioner. The supervisor must be licensed in the same discipline as the course of study being completed by the clinical resident.

(5) The supervising practitioner must review and sign off on patient care notes made by the clinical resident.

(6) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic or orthotic facility or its patients or clients.

(7) The clinical residency shall include both observation and supervised performance of assistant level work including assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, as

appropriate to the type of residency. Supervision shall be in the physical presence of the supervisor.

(8) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed practitioner.

(9) The clinical resident shall not independently provide ancillary patient care services of the type performed by a licensed assistant and may not independently engage in prosthetic and orthotic care directly to the patient.

(10) The clinical resident may be only incidentally involved in other duties including, but not limited to, scheduling, medical records, clerical, payroll and accounting, janitorial/housekeeping, transportation, or delivery.

(11) When terminating or completing a residency, the written documentation shall indicate the number of hours satisfying the requirements of this section that were completed by the clinical resident.

(12) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

(c) Scope of practice.

(1) When assistant patient care services are performed by a licensed assistant, the supervising licensed practitioner of that assistant must review and sign off on the clinical note written by the assistant within ten working days of the date the service was provided.

(2) A licensed orthotist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed orthotist or licensed prosthetist/orthotist.

(3) A licensed prosthetist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed prosthetist or licensed prosthetist/orthotist.

(4) A licensed prosthetist/orthotist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed prosthetist/orthotist.

(5) The supervising practitioner is responsible for the acts or omissions of the licensed assistant.

(6) A licensed assistant may only perform critical care events while in the physical presence of the supervising practitioner.

(7) Except as set forth in this subsection, the supervising practitioner shall supervise and direct the licensed assistant.

(8) The supervising practitioner shall report to the department violations of the Act or this chapter committed by the licensed assistant.

(9) Assistants may only practice in a facility accredited under §114.29, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

§114.28. Technician Registration.

(a) A technician must be supervised by a licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant.

(b) To qualify for registration as a technician, an applicant must submit:

(1) a supervision agreement form to show proof of a current supervisory relationship or tentative supervisory relationship, as described in subsection (a);

(2) a copy of:

(A) an official diploma or official transcript indicating graduation from high school or a certificate of high school equivalency; or

(B) official transcripts from a regionally accredited college or university, showing that the applicant earned at least three semester hours of credit; and

(C) documentation, acceptable to the department, demonstrating completion of not less than 1,000 hours of laboratory experience as a prosthetic technician or as an orthotic technician.

(c) Registration as a technician is voluntary.

(d) A registered technician is not authorized to provide patient care to orthotic or prosthetic patients, including ancillary or assistant patient care services.

(e) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§114.29. Accreditation of Facilities.

(a) The purpose of accreditation is to identify for prospective patients, referral sources, and third-party payers which prosthetic or orthotic facilities meet the department's requirements. This section is adopted under the Act, §605.260. All facilities where orthotics and prosthetics are provided by persons licensed or registered under this title must be accredited under this chapter, unless the facility is one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(b) Accreditation requirement inapplicable to certain facilities. The accreditation requirement of the Act does not apply to a facility licensed under the Health and Safety Code, Title 4, in accordance with §605.260(e) of the Act. These facilities include hospitals, convalescent and nursing homes, ambulatory surgical centers, birthing centers, abortion facilities, continuing care facilities, personal care facilities, special care facilities, maternity homes, and end-stage renal disease facilities.

(c) Requirement for practice setting of licensees.

(1) A person licensed under the Act, Texas Occupations Code, Chapter 605, who practices in Texas shall practice only in facilities accredited under the Act, unless the type of practice is exempted by the Act, §§605.301 - 605.305, or the facility is one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(2) A facility shall not be required to achieve accreditation under this section if the facility or person(s) providing health care services at the facility do not perform or hold itself or themselves out as performing or offering to perform prosthetics or orthotics.

(d) Accreditation application. The application shall be completed and submitted to the department on a department-approved form. The application shall be accompanied by the appropriate fee.

(1) A new application for accreditation is required for:

(A) a new facility;

(B) a new location or branch of existing, affiliated facilities;

(C) a new location of an existing facility that is relocating;

(D) a facility adding the prosthetic or orthotic category to an accreditation that is not expired, suspended or revoked;

(E) a facility for which the accreditation has expired or has been terminated; and

(F) an existing facility that has been transferred to new ownership, regardless of prior accreditation status.

(i) A change of ownership of a facility occurs when there is a change in the person(s) legally responsible for the operation of the facility, whether by lease or by ownership.

(ii) The new owner of a prosthetic or orthotic facility must apply for accreditation within ten business days after the change in ownership.

(2) The application for accreditation must include:

(A) a scaled floor plan of the facility indicating the total square feet in the facility and clearly showing the location of parallel bars;

(B) labeled photographs of each room and hallway clearly showing wheelchair accessibility and privacy protections for patients;

(C) labeled photographs of the facility entrance clearly showing wheelchair accessibility; and

(D) labeled photographs of all lab and fabrication areas.

(3) If a person applies for accreditation of more than one facility owned by that person, the department requires one primary application and separate addendum pages for additional sites to be accredited.

(4) If the department does not grant accreditation to the entity that applies to be an accredited facility, the accreditation fee will not be returned.

(5) The department shall give the applicant written notice of the reason(s) for the proposed decision if the facility fails to obtain accreditation.

(e) Personnel requirements for accredited facilities. Accredited facilities shall have the following staff:

(1) Practitioner in charge.

(A) An accredited facility must be under the on-site clinical direction of a practitioner licensed by the department in the discipline(s) for which the facility is accredited. The practitioner in charge shall supervise the provision of prosthetics or orthotics in accordance with the Act and rules.

(B) A person who holds a temporary license or a student registration may not serve as the on-site practitioner in charge.

(C) To change the designation of the on-site practitioner(s) in charge, the facility shall notify the department in writing of the name and license number of the new on-site practitioner(s) and the effective date of the change within thirty (30) days after the change is effective. The written notice shall be accompanied by the appropriate fee.

(2) Residency program director. Facilities providing professional clinical residencies shall have a residency program director to provide direct and indirect supervision of residents. The program director shall be on site as appropriate in accordance with the responsibilities in §114.30. The program director must be a Texas licensed practitioner whose license is in the same discipline in which the professional clinical residency is being conducted.

(3) Safety manager. An accredited facility must designate at least one person as the safety manager.

(A) The safety manager shall develop, carry out, and monitor the safety program for the accredited facility.

(B) To change the designation of the safety manager(s), the facility shall notify the department in writing of the name and license number of the safety manager(s), if any, and the effective date of the change within thirty (30) days after the change is effective. The written notice shall be accompanied by the appropriate fee.

(f) General requirements for accredited facilities.

(1) A facility may not provide services until the department has approved the accreditation.

(2) The facility building and property must meet all applicable federal, state, and local laws, codes, and other requirements.

(3) An accredited facility must display the accreditation certificate in a prominent location in the facility where it is available for inspection by the public.

(4) An accreditation certificate issued by the department is the property of the department and must be surrendered on demand by the department.

(5) A facility accredited under the Act shall prominently display a consumer complaint notice or sign that complies with the requirements of §114.70(d).

(6) An accredited facility may advertise as a "Prosthetic and/or Orthotic Facility Accredited by the Texas Department of Licensing and Regulation." A facility that is exempt or that is not subject to the Act, or that the department does not accredit may not advertise or hold itself out as a facility accredited by the department.

(7) An accreditation issued under this chapter may not be transferred or sold to another facility, location, or owner.

(8) An accredited facility must display the license certificates of its practitioners in a prominent location in the facility where they are available for inspection by the public.

(9) An accredited facility must display a visible sign with its hours of operation, including:

(A) hours of normal business operation, and when appropriate;

(B) information regarding temporary closure, including holidays, or for periods during business hours, including specific dates and times of the closure and emergency contact information.

(g) Failure to achieve accreditation. Facilities that fail to achieve accreditation as required by the Act and the rules are noncompliant with the Act and rules and are subject to disciplinary action.

(h) Facilities failing to renew the accreditation by the expiration date are subject to the late renewal fee schedule applicable to licensees in §60.83 of this title (relating to Late Renewal Fees).

(i) Inspections.

(1) Inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation.

(2) Each accredited facility shall be inspected at least once every two years to verify compliance with the Act and this chapter.

(3) Facilities are subject to random inspection and inspection to investigate complaints.

(4) The department may conduct inspections under the Act and this chapter without advance notice.

(5) Inspections shall be performed during the hours of normal business operation of the facility. The department inspector will contact the facility practitioner in charge or other representative upon arrival at the facility, and before proceeding with the inspection.

(6) The facility practitioner in charge or representative shall cooperate with the inspector in the performance of the inspection.

(j) Facility cleanliness. The facility shall be constructed and maintained appropriately to provide safe and sanitary conditions for the protection of the patients and the personnel providing prosthetic and orthotic care.

(1) Licensees shall wash their hands with soap and water before treating each patient.

(2) Patient examination and treatment rooms shall be cleaned after each patient.

(3) Hand soap and hand towels or hand dryers must be available at the sinks used by employees and patients.

(4) Exam tables shall either be covered in a material that can be disinfected and shall be cleaned and disinfected after providing service to each patient or the facility must use disposable covers that are one-time use and that are replaced after providing service to each patient.

(5) Appropriate gloves and disinfectants for disease control must be available in examination rooms and treatment areas.

(6) Facilities shall keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(7) Plumbing fixtures, including toilets and wash basins, shall be kept clean. Any disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(8) Facilities shall have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and for potable water supply.

(9) Facilities shall provide access to at least one restroom located on or adjacent to the premises of the facility that complies with applicable current Americans with Disabilities Act or Texas Accessibility standards. Chemical supplies shall not be stored in restrooms or other areas accessible to the public or to patients.

(10) Facilities shall not be utilized for living or sleeping purposes except as applicable to patients, and may not be used for any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public.

(k) Patient waiting area.

(1) Patient waiting areas must be separate from other areas.

(2) Chairs with armrests must be provided in waiting rooms. Chairs without armrests or wheels must be provided upon patient request.

(3) A telephone must be made available for patient use.

(l) Examination/treatment rooms.

(1) Rooms in which patients are seen must maintain privacy and have permanent, floor-to-ceiling walls or dividers and rigid doors that can be closed. Windows must be covered in a way that assures privacy.

(2) At least one set of parallel bars and a mirror that is affixed to the wall or a mirror with a free standing base for patient ambulation trials must be provided in each facility.

(3) Chairs with armrests must be provided in examination/treatment rooms. Chairs without armrests or wheels must be provided upon patient request.

(m) Safety.

(1) Safety equipment, including safety glasses or goggles and dust masks, shall be available to persons working in an accredited facility.

(2) Proper machine use training shall be provided to staff. The facility shall maintain records documenting training, listing the name of the staff person and the date of training for each machine.

(3) Safety guards on machines shall be in place in accordance with the manufacturers' specifications.

(4) Lab/Fabrication areas must be separated from other areas by walls or rigid doors and have adequate lighting.

(5) If smoking is permitted, policies and procedures to control smoking materials shall be clearly posted.

(6) At least one safety manager shall be assigned to the facility. The safety manager shall develop, carry out, and monitor the safety program.

(n) Business office area.

(1) Patient records shall include accurate and current progress notes.

(2) Patient records must be kept private.

(3) Patient records shall not be made available to anyone outside the facility without the patient's signed consent or as required by law.

(4) Records shall be kept for a minimum of five years.

(o) General.

(1) Americans with Disabilities Act compliant restroom and hand washing facilities shall be safe and accessible to the patients.

(2) The facility shall have the equipment, tools, and materials to provide casting, measuring, fitting, and major repairs and adjustments.

§114.30. Professional Clinical Residency Requirements.

(a) The department will accept a professional clinical residency having standards that are equivalent to or exceed NCOPE standards and those set forth in this chapter, at the time the residency was being completed.

(b) The Texas licensure requirements in this section apply only to residencies and residency programs fulfilled or conducted in Texas.

(c) Professional clinical residency programs must meet or exceed current NCOPE standards.

(d) The resident's involvement in patient care must meet or exceed current NCOPE standards.

(e) A clinical resident must be directly involved in providing patient care, under the supervision of a Texas licensed practitioner whose license is in the same discipline in which the professional clinical residency is being completed.

(f) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

(g) A professional clinical residency must provide the residents with a written description of the educational program, including the scope and duration of assignments to other facilities if part of the residency. The written description of the program must demonstrate equivalency to NCOPE requirements and must include:

- (1) the term of residency;
- (2) job description;
- (3) pertinent policies and procedures;
- (4) safety requirements;
- (5) patient confidentiality;
- (6) liability and malpractice insurance;
- (7) expectations;
- (8) limitations and restrictions of residency; and
- (9) the name of the practitioner who is designated as the residency program director.

(h) Facility requirements. A facility offering a professional clinical residency program must:

(1) be accredited by the department unless the facility is one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act;

(2) have the resources and adequate facilities for residents to fulfill their education and patient care responsibilities;

(3) have resources and adequate facilities for residents to develop proficiency in laboratory skills in prosthetic and orthotic fabrication; and

(4) meet current NCOPE requirements.

(i) Responsibilities of the residency program director.

(1) Each residency program director must meet the current NCOPE requirements.

(2) The prosthetic and orthotic supervising licensee-to-resident ratio shall not exceed one Texas licensed practitioner to two residents.

(3) The program director shall maintain documentation of residents' agreements.

(4) The program director shall supervise residents during patient care.

(A) Direct supervision of the following is required:

- (i) critical care events;
- (ii) the fitting and delivery process; and
- (iii) ancillary patient care services.

(B) The supervising practitioner shall review and sign off on patient care notes made by the clinical resident, and review all clinical records, within ten working days.

(C) Indirect supervision of clinical procedures, except critical care events, is permitted.

(D) Supervision shall be provided by a practitioner licensed in Texas in the discipline being taught.

(E) Overall assurance of quality patient care is the ultimate responsibility of the supervising practitioner.

(5) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be completed quarterly. This determination is the residency program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the residency program director and staff, each program:

(A) evaluates the knowledge, skills and professional growth of its residents, at least quarterly;

(B) provides to residents a written assessment of their performance quarterly; and

(C) maintains written evaluations on department-approved forms, as part of the performance record for each resident. The performance record of each resident shall be available to that resident.

(j) Resident responsibilities and qualifications.

(1) The resident shall participate in safe, effective and compassionate patient care under supervision commensurate with his or her level of advancement and responsibility.

(2) The resident must hold a student registration issued under the Act.

(k) Residency objectives.

(1) Clinical assessment. Upon completion of a residency, a person must be proficient in current NCOPE requirements, including clinical assessment skills for an individual requiring prosthetic or orthotic services as demonstrated by the ability to:

(A) obtain a history of the patient to determine the need for a specific device by interviewing the patient, and others, if necessary, and/or by reviewing available records;

(B) observe gait, coordination, present device if available and other physical characteristics to supplement patient history and physical examination;

(C) examine the patient to determine skin condition, joint range of motion and muscle strength;

(D) assess the specific needs of individual patients by integrating the information obtained from history, examination and observation;

(E) discuss with the patient his or her needs and expectations;

(F) provide information to the patient, family and involved health professionals regarding a device's potential advantages and disadvantages to assure understanding of the treatment plan and cooperation of the individuals involved;

(G) develop a treatment protocol for patients by review of data obtained to determine a specific device recommendation and plan for its use; and

(H) obtain and accurately record appropriate measurements and other data from the patient to design the recommended device.

(2) Patient management. Upon completion of a residency, a person must be proficient in patient management skills under current NCOPE requirements for prosthetic or orthotic patients as displayed by the ability to:

(A) measure a patient by using proper instruments and tests. Compile data to be used in device design and fabrication;

(B) manipulate the patient's limbs to provide correction, position or deformation to obtain the most appropriate information;

(C) replicate the patient's body or limbs to obtain an accurate anatomical impression to be used in fabricating a prosthesis or orthosis;

(D) achieve optimum comfort, function and cosmesis by using proper fitting techniques;

(E) visually evaluate if a patient's gait has achieved optimum prosthetic or orthotic function;

(F) achieve optimum alignment and function of a patient's prosthesis or orthosis by evaluating the sagittal, transverse and coronal planes;

(G) maintain proper documentation of the patient's treatment history through established recordkeeping techniques; and

(H) provide ongoing patient care to assure continued proper fit and function of the prosthesis or orthosis.

§114.40. Renewal.

(a) Application. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses and registrations.

(1) After the initial license period, a licensee must renew the license every two years. This requirement does not apply to renewal of a temporary license or a student registration.

(2) At least thirty (30) days before the expiration date of a person's license, the department shall send notice to the licensee at the address in the department's records, of the expiration date of the license, the amount of the renewal fee due and a license renewal form that the licensee must complete and return to the department with the required renewal fee.

(3) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the license shall not excuse failure to apply for renewal or late renewal.

(4) The department shall not renew the license of a licensee who is in violation of the Act or department rules at the time of application for renewal.

(b) A student registration may be renewed once for an additional two years. A student registration may not be renewed more than once in each area: prosthetics, orthotics, or both.

(c) License renewal requirements. To renew a license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) submit proof of successfully completing the Texas Jurisprudence Exam, if applicable;

(3) successfully pass a criminal history background check;

(4) complete applicable continuing education requirements under §114.50;

(5) comply with the continuing education audit process described under §114.50, as applicable; and

(6) submit the renewal fee required under §114.80.

(d) Renewal for a retired practitioner performing voluntary charity care.

(1) A retired practitioner performing voluntary charity care is a person who is:

(A) at least 55 years old;

(B) is not employed for compensation in the practice of orthotics or prosthetics; and

(C) has notified the department in writing of the intention to retire and provide only voluntary orthotic or prosthetic charity care.

(2) A retired practitioner who is only providing voluntary charity care may renew the license by submitting a renewal form, the required fee; and documentation of required continuing education hours.

(3) A retired practitioner may not change his or her retired status until the next renewal period. To change status upon renewal, the retiree must notify the department in writing, submit a renewal form, the renewal fee for a prosthetist or orthotist license, and documentation of the required continuing education hours.

(e) Renewal of facility accreditation.

(1) An accreditation is valid for two years.

(2) The department shall not renew the accreditation of a facility that is violating or has violated the Act or this chapter until the facility has corrected the violation(s) to the satisfaction of the department.

(3) At least thirty (30) days before the expiration of a facility's accreditation, the department will send notice to the facility of the accreditation expiration date, the amount of the renewal fee due and an accreditation renewal application. Failure to receive a renewal application from the department does not exempt the facility from renewing its accreditation. Each facility is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the license shall not excuse failure to apply for renewal or late renewal.

(4) The department shall issue an accreditation renewal to a facility that has met the requirements for renewal. It shall be affixed to or displayed with the original accreditation and is the property of the department.

(5) After an accreditation is expired and until the facility has renewed the accreditation, the facility may not provide orthotic or prosthetic patient care.

(f) Expiration of license or accreditation.

(1) A person may not practice with an expired license.

(2) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed orthotist," "licensed prosthetist," "licensed prosthetist/orthotist," "licensed orthotist assistant," "licensed prosthetist assistant," "licensed prosthetist/orthotist assistant," or use the letters "LO," "LP," "LPO," "LOA," "LPA," or "LPOA," and may not use facsimiles of those titles.

(3) A facility that fails to renew its accreditation shall not represent or imply that the facility is accredited by the department.

(4) A person whose license has expired may late renew the license in accordance with §60.31 of this title (relating to License Renewal Applications) and §60.83 of this title (relating to Late Renewal fees). Facilities whose accreditation has expired may late renew the accreditation in accordance with §60.31 and §60.83.

§114.50. Continuing Education.

(a) This section applies to licensees and registrants of the department. This section does not apply to a temporary license or a student registration.

(b) The first continuing education period shall begin after the licensee has renewed his or her license for the first time. Continuing education is not required during the initial license period. Subsequently, a licensee shall attend continuing education activities as a condition of renewal of a license.

(c) Continuing education periods shall be two years in length. The period coincides with the license period.

(d) Determination of continuing education credits.

(1) For seminars, lectures, presentations, symposia, workshops, conferences and similar activities, 50 minutes shall be considered as one credit hour.

(2) Course work completed at or through an accredited college or university shall be credited based on eight credits for each semester hour completed for credit. Continuing education credit will be granted for a grade of C or better for the continuing education period in which the course is completed.

(e) Licensees shall attend and complete qualifying continuing education each renewal period unless the licensee is exempt under subsection (l).

(1) Licensees must maintain a record of continuing education credits earned by the licensee and proof of completion of the continuing education credits, which may include certificates, transcripts from certifying agencies or associations, letters from program sponsors concerning the licensee's attendance and participation, or other documentation satisfactory to the department verifying the licensee's attendance or participation.

(2) Attendance and completion of the following number of continuing education credits are required during each renewal period:

(A) prosthetist or orthotist license--24;

(B) prosthetist and orthotist license--40;

(C) prosthetist or orthotist assistant--12;

(D) prosthetist and orthotist assistant--20;

(E) prosthetic or orthotic technician--6;

(F) prosthetic and orthotic technician--10; and

(G) prosthetist with orthotist assistant license or orthotist with prosthetist assistant license--32.

(f) At least 50% of the total hours of continuing education required must be live, instructor-directed activities. Fifty percent or less may be self-directed study.

(g) Continuing education hours must be directly related to prosthetics, orthotics, physical or occupational therapy, orthopedic, podiatric, pedorthic, physical medicine or other subjects approved by the department.

(h) Continuing education credits must be offered or approved by a state, regional or national prosthetic or orthotic, or allied health organization or offered by a regional accredited college or university.

(i) Continuing education undertaken by a licensee shall be acceptable if the licensee attends and participates in an activity in the following categories:

(1) academic courses;

(2) clinical courses;

(3) in service educational programs, training programs, institutes, seminars, workshops, and conferences; or

(4) self-study modules, with or without audio and video components, if a post-test is required and the number of hours completed do not exceed 50% of the credits required;

(5) distance learning activities, audiovisual teleconferences, and interactive computer generated learning activities provided a documented post-test is completed and passed;

(6) instructing or presenting in activities listed in paragraphs (1) - (3). Multiple presentations of the same program or equivalent programs may only be counted once during a continuing education period; and

(7) writing a book or article applicable to the practice of prosthetics or orthotics. Four (4) credits for an article and eight (8) credits for a book will be granted for a publication in the continuing education period in which the book or article was published. Multiple publications of the same article or an equivalent article may only be counted once during a continuing education period. Publications may account for 25% or less of the required credit.

(j) Reporting of continuing education credit.

(1) At the time of license renewal, licensees shall file a continuing education report on a department-approved form.

(2) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(3) The audit process shall be as follows:

(A) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(B) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(C) Failure to timely furnish this information or providing false information during the audit process or the renewal process, are grounds for disciplinary action against the license holder.

(D) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(k) Licenses will not be renewed until continuing education requirements have been met.

(l) The following licensees are exempt from the requirements of this section if the qualifying event occurred during the twenty-four (24) months immediately preceding the license expiration date. The licensee shall submit proof satisfactory to the department:

(1) a licensee who suffered a mental or physical illness or disability that prevented the licensee from complying with the requirements of this section; or

(2) a licensee who suffered a catastrophic event such as a flood, fire, tornado or hurricane that prevented the licensee from complying with the requirements of this section.

(m) Licensees employed as faculty in CAAHEP accredited programs or in programs having educational standards equal to or greater than CAAHEP in prosthetics and orthotics shall be exempt from 50% of the continuing education requirements in this section.

(n) Licensed practitioner who are renewing under retired voluntary charity care status shall be exempt from 50% of the continuing education requirements in this section.

(o) Failure to submit documentation satisfactory to the department as required by subsection (l), shall be considered the same as failing to meet the continuing education requirements of this section.

(p) Untrue documentation or information submitted to the department may subject the licensee to disciplinary action.

(q) Activities unacceptable as continuing education for which the department may not grant continuing education credit are:

(1) education incidental to the licensee's regular professional activities such as learning occurring from experience or research;

(2) professional organization activity such as serving on boards, committees or councils or as an officer;

(3) continuing education activities completed before the renewal period; and

(4) performance of duties that are routine job duties or requirements.

§114.65. Orthotists and Prosthetists Advisory Board; Membership.

(a) Membership. The advisory board consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two licensed orthotist members who each have practiced orthotics for the five years preceding the date of appointment;

(2) two licensed prosthetist members who each have practiced prosthetics for the five years preceding the date of appointment;

(3) one licensed prosthetist orthotist member who has practiced orthotics and prosthetics for the five years preceding the date of appointment;

(4) one member who is a representative of the public who uses an orthosis; and

(5) one member who is a representative of the public who uses a prosthesis.

(b) Appointments to board. Appointments to the advisory board shall be made without regard to the race, color, national origin, religion, gender, age, or disability of the appointee.

§114.66. Duties.

Purpose. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

§114.67. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall

appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§114.68. Officer.

The members of the advisory board shall elect from the advisory board's membership a presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

§114.69. Meetings.

(a) Meetings of the advisory board shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(b) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is four members.

(d) Four or more advisory board members may call a special meeting of the advisory board by providing written notice not less than fourteen (14) days before the date of the meeting to the presiding officer of the commission, the executive director and all other members of the advisory board.

(e) Not more than two special meetings of the advisory board may be called under subsection (d) in a calendar year.

§114.70. Responsibilities of Licensees.

(a) Persons to whom a license has been issued shall return the license to the department upon the surrender, revocation or suspension of the license.

(b) All applicants, licensees, registrants and accredited facilities shall notify the department of any change(s) of name or mailing address. Accredited facilities shall notify the department of any change(s) in the facility name, the name of the safety manager and the practitioner in charge, the mailing address and physical address. Written notification to the department and the appropriate fee shall be submitted to the department within thirty (30) days after a change is effective. Changes in a facility's physical location or ownership require a new application for accreditation.

(c) Name changes. Before the department will issue a new license certificate and identification card, notification of name changes must be received by the department. Notification shall include a copy of a marriage certificate, court decree evidencing the change, or a Social Security card reflecting the licensee's or registrant's new name.

(d) Consumer complaint information notices. All licensees, registrants and accredited facilities, excluding facilities that a licensee visits to treat patients, such as hospitals, nursing homes or patients' homes, shall prominently display a consumer complaint notice or sign in a waiting room or other area where it shall be visible to all patients. Lettering shall be at least one-fourth inch, or font size 30, in height, with contrasting background, containing the department's name, website, mailing address, and telephone number for the purpose of directing complaints to the department regarding a person or facility regulated or requiring regulation under the Act. Script or calligraphy prints are not allowed. The notice shall be worded as specified by the department.

§114.80. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a license, registration, or

accreditation will be issued or renewed. A new application for accreditation of a facility and payment of the initial accreditation fee may be required for certain changes at a facility in accordance with §114.29(d).

(b) Schedule of fees.

- (1) prosthetist or orthotist license or license renewal--\$300;
- (2) prosthetist/orthotist license or license renewal--\$400;
- (3) prosthetist or orthotist assistant license or license renewal--\$200;
- (4) prosthetist/orthotist assistant license or license renewal--\$250;
- (5) prosthetic or orthotic technician registration or registration renewal--\$100;
- (6) prosthetic/orthotic technician registration or registration renewal--\$150;
- (7) prosthetic or orthotic student registration or registration renewal--\$75;
- (8) prosthetic/orthotic student registration or registration renewal--\$100;
- (9) prosthetist or orthotist temporary license or temporary license renewal--\$150;
- (10) prosthetist/orthotist temporary license or temporary license renewal--\$200;
- (11) prosthetic or orthotic facility accreditation or accreditation renewal--\$400;
- (12) prosthetic/orthotic facility accreditation or accreditation renewal--\$500;
- (13) upgrade for student registrant after passing the examination:
  - (A) one category--\$200;
  - (B) two categories--\$300;
- (14) changing the name of the on-site practitioner in charge of an accredited facility--\$50;
- (15) changing the name of the safety manager of an accredited facility--\$50;
- (16) changing the name of an accredited facility--\$50;
- (17) retired voluntary charity care prosthetist or orthotist license renewal--\$150;
- (18) retired voluntary charity care prosthetist/orthotist license renewal--\$200;
- (19) prosthetist with orthotist assistant license or orthotist with prosthetist assistant license renewal--\$350;
- (20) license, registration, or accreditation duplicate or replacement--\$25;
- (21) orthotic or prosthetic examination--shall be determined by the department and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee.

(c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

(f) Fees for dishonored/returned checks or payments and late renewal fees for accredited facilities shall follow the late fee schedule applicable to licenses under §60.82 and §60.83.

(g) All fees paid to the department are nonrefundable.

*§114.90. Professional Standards and Basis for Disciplinary Action.*

(a) General. This section is authorized under the Orthotics and Prosthetics Act (Act), Texas Occupations Code, §605.353, and Chapter 51 of the Texas Occupations Code.

(1) If a person or entity violates any provision of Texas Occupations Code, Chapters 51, 605, or any other applicable provision, this chapter, or a rule or order issued by the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 605, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed when a license is obtained by fraud, misrepresentation, or concealment of a material fact, which includes, but is not limited to, the following:

(1) committing fraud, misrepresentation, or concealment of a material fact submitted with an application or renewal for licensure, registration, or facility accreditation;

(2) committing fraud, misrepresentation, or concealment of a material fact submitted with continuing education requirements;

(3) impersonating or acting as a proxy for an examination candidate;

(4) impersonating or acting as a proxy for a licensee or registrant at a continuing education activity;

(5) using a proxy to take an examination or to participate in a continuing education activity;

(6) providing false or misleading information to the department regarding an inquiry by the department; or

(7) committing other fraud, misrepresentation, or concealment of a material fact submitted to the board or department.

(c) Fraud or deceit concerning services provided. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

(1) placing or causing to be placed, false, misleading, or deceptive advertising;

(2) making or allowing false, misleading, or deceptive representations concerning the services or products provided or which have been provided;

(3) making or allowing false, misleading, or deceptive representations on an application for employment;

(4) using or allowing a person to use a license or registration for any fraudulent, misleading, or deceptive purpose;

(5) knowingly employing or professionally associating with a person or entity who is providing prosthetic or orthotic services and is not licensed or accredited as required by the Act or this chapter;

(6) forging, altering, or falsifying a physician's order;

(7) delivering prosthetic or orthotic services or products through means of misrepresentation, deception, or subterfuge;

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Texas Occupations Code, §102.001;

(9) making or filing, or causing another person to make or file, a report or record that the licensee knows to be inaccurate, incomplete, false, or illegal;

(10) practicing with an expired, suspended, or revoked license or registration, or in a facility that is required to be accredited and has an expired, suspended, or revoked accreditation;

(11) persistently or flagrantly overcharging a client, patient, or third party;

(12) persistently or flagrantly over treating a client or patient;

(13) violation of the Act, this chapter, or an order issued by the executive director or the commission;

(14) taking without authorization medication, supplies, equipment, or personal items belonging to a patient; and

(15) other fraud or deceit concerning services provided.

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c). Other action that may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or that may cause an administrative or civil penalty to be imposed include, but are not limited to:

(1) discriminating based on race, color, national origin, religion, gender, age, or disability in the practice of prosthetics or orthotics;

(2) having surrendered a license to the department or the licensing authority of another state, territory, or country to avoid disciplinary action or prosecution;

(3) having a license revoked or suspended, having had other disciplinary action taken against the applicant, or having had the application for a license refused, revoked, or suspended by the department or the licensing authority of another state, territory, or country;

(4) engaging in conduct that state, federal, or local law prohibits;

(5) failing to maintain acceptable standards of prosthetics or orthotics practices as set forth by the department in rules adopted pursuant to this chapter;

(6) being unable to practice prosthetics or orthotics with reasonable skill, and safety to patients, due to illness or use of alcohol, drugs, narcotics, chemicals or other types of material or from mental or physical conditions;

(7) having treated or agreed to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope of the person's license;

(8) failing to supervise and maintain supervision of clinical or technical personnel, licensed or unlicensed, in compliance with the Act and this chapter, or failing to provide on-site supervision for an accredited facility, if designated as the practitioner in charge of the facility;

(9) providing prosthetic or orthotic services or products in a way that the person knows, or with the exercise of reasonable diligence should know violates the Act or this chapter;

(10) failing to assess and evaluate a patient's status;

(11) providing or attempting to provide services for which the licensee is unprepared through education or experience;

(12) delegating functions or responsibilities to an individual lacking the ability, knowledge, or license/registration to perform the function or responsibility;

(13) revealing confidential information concerning a patient or client except where required or allowed by law;

(14) failing to obtain accreditation for a facility that must be accredited or failing to renew the accreditation of a facility that must be accredited;

(15) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;

(16) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;

(17) engaging in sexual contact as defined by the Penal Code, §21.01, with a patient or client as the result of the patient or client relationship;

(18) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(19) submitting false documentation or information to the department relating to continuing education;

(20) failing or refusing to provide acceptable documentation of continuing education reported to the department for renewal if selected for an audit, or if specifically requested by the department;

(21) failing to cooperate with the department during an investigation of a complaint by not furnishing required documentation or responding to a request for information or a subpoena issued by the department or its authorized representative;

(22) interfering with an investigation or disciplinary proceeding by misrepresentation of facts or by use of threats, retaliation or harassment against anyone;

(23) fitting a prosthesis or orthosis without prescription;

(24) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician;

(25) providing orthotic care in a facility that is not accredited in orthotics that is required to be accredited;

(26) providing prosthetic care in a facility that is not accredited in prosthetics that is required to be accredited;

(27) failing to truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department;

(28) failing to comply with an order issued by the executive director or the commission; and

(29) other unprofessional or unethical conduct.

(e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) Performing an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of the rights of others;

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products for which compensation has been received or failing to perform services or provide products with reasonable care, skill, expedience, and faithfulness;

(B) failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

(f) Interference with an investigation. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for interference with a department investigation by the misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

(g) Surrender of license and formal disciplinary action.

(1) When a licensee or accredited facility has offered the surrender of the license or accreditation after a complaint has been filed, the department shall consider whether to accept the surrender of the license.

(2) Surrender of a license or accreditation without acceptance by the department does not deprive the department of jurisdiction to prosecute an alleged violation of the Act or this chapter.

(3) When the department accepts a surrender while a complaint is pending, that surrender is deemed to be the result of a formal disciplinary action and an order shall be prepared accepting the surrender and reflecting this fact.

(4) A license surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

(h) Frivolous complaints. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for filing a complaint with the department that is frivolous or made in bad faith.

#### §114.95. Complaints.

(a) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation under this chapter are confidential in accordance with §605.2021 of the Act.

(b) The department shall list with its business telephone number a toll-free telephone number established to accept complaints relating to a health profession regulated by the department.

(c) For purposes of this section, a health profession is a profession for which the enabling statute is located in Title 3, Occupations Code, or that is determined to be a health profession under other law.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505907

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 463-8179



## **TITLE 34. PUBLIC FINANCE**

### **PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS**

#### **CHAPTER 61. TERMS AND PHRASES**

##### **34 TAC §61.1**

The Employees Retirement System of Texas (ERS) proposes an amendment to 34 Texas Administrative Code (TAC) Chapter 61, concerning Terms and Phrases, by amending §61.1 concerning Definitions.

Section 61.1 (Definitions) is proposed to be amended to include a definition for an "interested person." The proposed amendment will clarify who an interested person may be with regard to ERS rules.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state government or local government as a result of enforcing or administering the rule. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule would be to define interested persons for purposes of determining the application of ERS rules using that term.

Comments on the proposed rule amendment may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, February 8, 2016, at 10:00 a.m.

The amendment is proposed under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the

funds of the retirement system and regarding the transaction of other business of the Board.

No other statutes are affected by the proposed amendment.

*§61.1. Definitions.*

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

(1) **Contributory service**--Service for which all necessary deposits were made with and are being held by the System.

(2) **System**--Employees Retirement System of Texas.

(3) **Trustees, board, or Board of Trustees**--The Board of Trustees of the Employees Retirement System of Texas.

(4) **Year**--The state fiscal year.

(5) **Interested Person**--Any member of the system; any beneficiary or survivor of a member; any retiree of the system; any guardian, administrator, or executor of a system member, retiree, or beneficiary; or any state agency employing system members.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505927

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: February 7, 2016

For further information, please call: (877) 275-4377



## CHAPTER 63. BOARD OF TRUSTEES

### 34 TAC §§63.1, 63.3, 63.4

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §§63.1, 63.3 and 63.4, concerning Duties of the Board of Trustees, Election of Trustees (Nomination Process) and Election of Trustees (Ballot).

Section 63.1 (Duties of the Board of Trustees) is proposed to be amended to clarify that the Board's appellate jurisdiction of appeals is provided in Chapter 67, Hearings on Disputed Claims.

Section 63.3 (Election of Trustees (Nomination Process)) is proposed to be amended to clarify the maximum number of signatures ERS will accept on a petition, so that candidates are still required to demonstrate sufficient support from state employees, but eliminating the cost of an extensive petition drive. The proposed amendment also provides that a petition submitted on behalf of a candidate must include original signatures; petitions with reproduced, photocopied, scanned or faxed signatures will be disqualified. These changes will also streamline the way in which ERS validates nominations, thereby reducing costs.

Section 63.4 (Election of Trustees (Ballot)) is proposed to be amended to clarify that ERS will set the time and location for the drawing for the order of names to appear on the ballot, and the proposed amendments also give examples of the types of information that ERS may request on the ballot. Section 63.4(j) is also ministerially amended to remove reference to a run-off elec-

tion. Following consultation with a number of groups and associations representing active and retired state employees, the ERS Board of Trustees determined that a run-off in a Trustee election was costly and added an additional three months to the election cycle. Conducting a run-off election significantly increases the cost of the process, and is not a prudent use of trust resources given the fiduciary duties of the Board of Trustees.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state government or local government as a result of enforcing or administering the rules. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to clarify the location of rules regarding the Board's appellate jurisdiction over appeals, and to make the election of new Board of Trustees members simpler, more transparent, and more cost-effective.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, February 8, 2016, at 10:00 a.m.

The amendments are proposed under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendment.

*§63.1. Duties of the Board of Trustees.*

The Board of Trustees shall formulate the basic and general policies, rules, and regulations consistent with the purposes, policies, principles, and standards stated in statutes administered by the board. The board has appellate jurisdiction of appeals from adverse determinations made by the executive director as provided in Chapter 67, Hearings on Disputed Claims.

*§63.3. Election of Trustees (Nomination Process).*

Names may be placed in nomination for the office of trustee of the Employees Retirement System of Texas (system) in the following manner.

(1) A candidate, or his or her agency, must file a petition on a form approved by the system requesting the candidate's name to be placed in nomination. The petition must be signed by 300 or more persons qualified to vote in the trustee election. The system will accept up to 600 signatures from each candidate.

(2) The signature of each person on a petition must be accompanied by that person's printed name, ZIP Code and the last four digits of the person's social security number. No person may sign a petition for more than one candidate. To do so will cause the signatures of the person to be disqualified on all petitions.

(3) Blank petition forms may be reproduced and utilized provided the reproduction is an exact replica of the original document.

(4) Petitions must be received in the system offices on or before the close of business (5 p.m.) of a specific workday set by the trustees. Signatures on petitions received after that time will not be counted.

(5) Reproduced, photocopied, scanned, or faxed [or fax] copies of signed petitions are not permitted and will be disqualified.

(6) Only those names of candidates whose petitions comply with this section will be presented on the ballot.

(7) The board shall adopt a calendar governing the conduct of each trustee election. Blank petitions shall be distributed by the system to state agencies at least 25 calendar days in advance of the return due date established by the trustees. Blank petitions will also be available to any requesting person.

§63.4. *Election of Trustees (Ballot).*

(a) The order of names on the ballot will be set by drawing. All nominated candidates or their representatives are entitled to be present at the drawing. The time and location of the drawing will be set by the system.

(b) All candidates must submit within the time frame established by the system any information requested by the system [the following information] for presentation on the ballot. Such information may include, but is not limited to:

- (1) name as it is to appear on the ballot;
- (2) current classification/exempt title and position as a state employee;
- (3) name of current employing state agency; and[-]
- (4) other information the system determines may be helpful to persons qualified to vote in the election.

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide, within the time frame provided by the system, his or her state agency mailing address, a statement of qualifications and position on system issues consisting of 250 words or less, and such additional information as the system may request. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special system newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the electorate at the beginning of each election and will describe restrictions on the use of state funds to influence the outcome of any election.

(d) The system may contract with an election administrator to implement and monitor the election process. Balloting may be conducted electronically or in combination with a printed ballot.

(e) The system/election administrator will, at least 25 days in advance of the close of each election established by the election calendar, make ballots available to eligible voters. Upon request of the candidate, the system/election administrator will provide 500 ballots without preprinted names to each candidate.

(f) The system/election administrator will provide a 24-hour toll-free telephone line which eligible voters may use to request a printed ballot.

(g) Electronic ballots will be completed and submitted to the system/election administrator in accordance with the instructions contained in the electronic voting format.

(h) Each candidate may designate one (1) person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.

(i) The system/election administrator will disqualify ballots which do not meet the requirements and instructions specified in the electronic format or printed on the ballot.

(j) The Board, or its designee, shall certify the result of the election [~~and any run-off election~~].

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505928

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: February 7, 2016

For further information, please call: (877) 275-4377



## CHAPTER 65. EXECUTIVE DIRECTOR

### 34 TAC §§65.3, 65.11, 65.13

The Employees Retirement System of Texas (ERS) proposes amendments and the addition of new rules to 34 Texas Administrative Code (TAC) Chapter 65, concerning Executive Director, by amending §65.3, concerning Records of the System, and adding new rule §65.11, concerning Reimbursement for Training or Education, and new rule §65.13, concerning Enhanced Contract Monitoring.

Section 65.3 (Records of the System) is proposed to be amended to repeal subsection (c). It is not necessary for a state agency to have rules in place in order to charge for responding to Public Information Act (PIA) requests because ERS is required to follow the Office of the Attorney General's (OAG) rules regarding costs associated with producing information for PIA requests pursuant to §552.262, Texas Government Code. Therefore, ERS proposes to repeal §65.3(c), since it is no longer necessary.

Chapter 366 (H.B. 3337), Acts of the 84th Legislature, Regular Session, 2015, added §656.047(b) to the Texas Government Code. This new law requires agencies to adopt rules requiring the agency's executive head to authorize tuition reimbursement payments for employees. ERS proposes adding §65.11 to comply with this statute and the laws governing the trusts administered by ERS.

Chapter 326 (S.B. 20), Acts of the 84th Legislature, Regular Session, 2015, added §2261.253 to the Texas Government Code. This new law requires state agencies to establish procedures to identify each contract that requires enhanced contract or performance monitoring, and to submit information on the contract to the Board. ERS proposes adding new §65.13 to comply with this statute.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules. To Ms. Jones' knowledge, there are no known anticipated economic costs to persons who are required to comply with the rules as proposed. And, to Ms. Jones' knowledge, small businesses should not be affected by the rules.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a

result of enforcing the rules would be to ensure that ERS' rules are updated to repeal unnecessary rules and to comply with recently enacted legislation.

Comments on the proposed amendments and new rules may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, February 8, 2016, at 10:00 a.m.

The amendments and new rules are proposed under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of funds of the retirement system.

No other statutes are affected by the proposed amendments and new rules.

### §65.3. *Records of the System.*

(a) The executive director or his/her [her] designee is the custodian of records of the Employees Retirement System of Texas.

(b) The executive director may appoint a staff member to certify to the authenticity of copies of system records.

~~(c) The following guidelines are established for charges to be made for providing public information and copies of public information in the possession of the system.;~~

~~[(1) Standard paper copy--\$.10 per page.;~~

~~[(2) Nonstandard-size copy.;~~

~~[(A) Diskette: \$1.00;~~

~~[(B) Magnetic tape: actual cost.;~~

~~[(C) Data cartridge: actual cost.;~~

~~[(D) Tape cartridge: actual cost.;~~

~~[(E) Rewritable CD (CD-RW)--\$1.00.;~~

~~[(F) Non-rewritable CD (CD-R)--\$1.00.;~~

~~[(G) Digital video disc (DVD)--\$3.00.;~~

~~[(H) JAZ drive--actual cost.;~~

~~[(I) Other electronic media--actual cost.;~~

~~[(J) VHS video cassette--\$2.50.;~~

~~[(K) Audio cassette--\$1.00.;~~

~~[(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper)--\$.50.;~~

~~[(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map photographic)--actual cost.;~~

~~[(3) Labor charge.;~~

~~[(A) For programming--\$28.50 per hour.;~~

~~[(B) For locating, compiling, and reproducing--\$15 per hour.;~~

~~[(4) Overhead charge--20% of labor charge.;~~

~~[(5) Microfiche or microfilm charge.;~~

~~[(A) Paper copy--\$.10 per page.;~~

~~[(B) Fiche or film copy--actual cost.;~~

~~[(6) Remote document retrieval charge--actual cost.;~~

~~[(7) Computer resource charge.;~~

~~[(A) Mainframe--\$10 per CPU minute.;~~

~~[(B) Midsize--\$1.50 per CPU minute.;~~

~~[(C) Client/server system--\$2.20 per clock hour.;~~

~~[(D) PC or LAN--\$1.00 per clock hour.;~~

~~[(8) Miscellaneous supplies--actual cost.;~~

~~[(9) Postage and shipping charge--actual cost.;~~

~~[(10) Photographs--actual cost as calculated in accordance with 1 TAC §111.69(5).;~~

~~[(11) Maps--actual cost as calculated in accordance with 1 TAC §111.69(4).;~~

~~[(12) Other costs--actual cost.;~~

~~[(13) Outsourced/Contracted Services--actual cost for the copy or services. May not include development costs.;~~

~~[(14) No Sales Tax--no Sales Tax shall be applied to copies of public information.;~~

~~(c) [(d)] No charge shall be made for one copy of any public record requested by members of the Legislature in the performance of their legislative duties or if the system determines that furnishing the records without cost can be considered as primarily benefiting the trust fund.~~

~~(d) [(e)] All funds generated from the charges assessed for providing public information and copies of public information shall remain a part of the funds of the system under the administration of the board.~~

### §65.11. Reimbursement for Training or Education.

Before an employee of the system may be reimbursed under §656.047(b), Texas Government Code, the executive director must authorize the tuition reimbursement payment based on compliance with the requirements of §656.047(b), and as consistent with applicable laws governing the trusts administered by ERS.

### §65.13. Enhanced Contract Monitoring.

(a) Contracts described by §2261.251(b), Texas Government Code, are subject to the system's enhanced contract and performance monitoring procedures.

(b) The executive director shall designate a staff member(s) who will be responsible for submitting the information on contracts described by §2261.251(b), Texas Government Code, to the board of trustees.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505929

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: February 7, 2016

For further information, please call: (877) 275-4377



## CHAPTER 85. FLEXIBLE BENEFITS

### 34 TAC §§85.1, 85.4, 85.7, 85.9, 85.13

The Employees Retirement System of Texas (ERS) proposes amendments to its Rules regarding Flexible Benefits within 34 TAC §§85.1, 85.4, 85.7, 85.9 and 85.13, concerning Introduction and Definitions, Separate Plans, Enrollment, Payment of Claims from Reimbursement Accounts, and Funding.

ERS administers a program delivering various benefits called the TexFlex Program. It includes a flexible spending account (FSA) program, and will now include a qualified transportation benefit plan. An FSA allows an employee to set aside, in a pre-tax process, a portion of earnings to pay or be reimbursed for certain qualifying expenses, such as dependent and health care expenses. A qualified transportation benefit plan can similarly offer a pre-tax process for commuting costs, such as transit or parking.

ERS has determined that the proposed amendments to §§85.1, 85.4, 85.7, 85.9, and 85.13 would simplify plan administration and benefit TexFlex program participants in a manner permitted by the Internal Revenue Code. The proposed amendments would also implement the qualified transportation benefit as contemplated by statute, and provide for a plan document for such qualified transportation benefit.

Section 85.1 (Introduction and Definitions) is proposed to be amended to clarify that the grace period still applies to an employee participating in a dependent care reimbursement account. In 2014, at the request of TexFlex participants, the ERS Board of Trustees amended Chapter 85 to change from a grace period to a \$500 carryover for the health care reimbursement plan. The proposed amendment clarifies that the dependent care reimbursement plan remains subject to the grace period.

Section 85.1 (Introduction and Definitions) and §85.4 (Separate Plans) are proposed to be amended to update the rules to offer TexFlex participants a qualified transportation benefit plan as permitted by §132 of the Internal Revenue Code. This is a tax favorable plan that permits participants to be reimbursed for certain costs associated with commuting, such as public transit or parking. The Internal Revenue Code permits such a benefit, but not as part of a §125 cafeteria plan. These proposed amendments would permit the offering of a separate TexFlex qualified transportation benefit plan governed by a plan document executed by the Executive Director of ERS as authorized by the Board of Trustees.

Section 85.7 (Enrollment) is proposed to be amended to provide that carryover amounts less than \$25.00 shall be forfeited to pay the administrative costs of the plan. Prior to the implementation of the carryover period, plan participants forfeited any unused balance at the end of the grace period, regardless of the amount that remained in the account. The administration of small account balances (less than \$25) in the plan, is not economically efficient or prudent. Therefore, in order to maximize administrative and plan efficiency, only balances that are \$25 or greater will be carried over.

Section 85.9 (Payment of Claims from Reimbursement Accounts) is proposed to be amended to clarify that a health care reimbursement account participant who has insufficient funds to pay for the monthly election amount during the plan year will be liable to make after-tax contributions to pay the monthly election.

Section 85.13 (Funding) is proposed to be amended to clarify that after a Qualifying Life Event (QLE), claims will be accounted for using a non-blended approach. The non-blended

approach provides that when a participant has such a QLE, such as adding a dependent by birth, adoption or marriage, the participant may increase contributions, and only the amounts contributed after the QLE and contribution increase will be available for new claims during the remainder of the plan year. Any claims accrued before the QLE and contribution increase are reimbursed using funds provided by the participant's original election.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules. To Ms. Jones' knowledge, there are no known anticipated economic costs to persons who are required to comply with the rules as proposed, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules include the reasons stated above, and also better serve and benefit state employees by clarifying certain rules of the TexFlex program, and also providing a qualified transportation benefit plan to TexFlex participants.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is February 8, 2016.

The amendments are proposed under the Texas Insurance Code, §1551.052 and §1551.206, which provide authorization for the ERS Board of Trustees to develop, implement, and administer a cafeteria plan, and to adopt necessary rules.

No other statutes are affected by the proposed amendments.

#### *§85.1. Introduction and Definitions.*

(a) Summary. The purpose of these rules is to govern the flexible benefits program. These rules constitute the Plan document for the State of Texas Employees Flexible Benefit Program (TexFlex). The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code (the Code), §125, as amended from time to time, and is intended to continue as long as it qualifies under §125 and is advantageous to the state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125. The plan may also include separate benefits as defined in the Code, §132, and regulations promulgated under the Code, §132, separate from the cafeteria plan, and governed by individual plan documents.

#### (b) Applicability of rules.

(1) These rules are applicable only to employees as defined in these rules, and terminated employees, as described in §85.3(b)(1)(B) and (C) of this title (relating to Eligibility and Participation).

(2) An employee who retired or separated from employment prior to September 1, 1988, shall not be entitled to benefits under the provisions of the plan and these rules, unless the employee is rehired and then becomes eligible for benefits.

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) Act--The state law that authorized the establishment of a flexible benefits plan and is designated in the Texas Insurance Code, Chapter 1551, as amended.

(2) Account--A record keeping account established by the Employees Retirement System of Texas or its designee in the name of each participant for the purpose of accounting for contributions made to the account and benefits paid to a participant.

(3) Active duty--The expenditure of time and energy in the service of an employer as defined in these rules. An employee will be considered to be on active duty on each day of a regular paid vacation or on a non-work day, on which the employee is not disabled, if the employee was on active duty on the last preceding work day.

(4) Board of trustees--The board of trustees of the Employees Retirement System of Texas (ERS).

(5) Code--The Internal Revenue Code, as amended from time to time.

(6) Compensation--A participant's base salary, including amounts that would otherwise qualify as compensation but are not received directly by the participant pursuant to a good faith, voluntary, written or electronic salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under this plan, plus longevity and hazardous duty pay and including non-monetary compensation, the value of which is determined by the Employees Retirement System of Texas, but excluding overtime pay.

(7) Debit Card--A bank issued convenience card or similar technology approved by the plan administrator and permitted to be used by participants as an optional method to pay for eligible transactions. Use of the card is governed by the plan administrator and issuing financial institution. The card is referred to as the Flex Debit Card.

(8) Dependent--An individual who qualifies as a dependent under the Code, §152, and when applicable taking into account the Code, §105, or any individual who is:

(A) a dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under the Code, §151, or, is otherwise, a qualifying individual as provided in the Code, §21; or

(B) a dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

(9) Dependent care reimbursement account--The book-keeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(10) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits).

(11) Dependent care expenses--Expenses incurred by a participant which:

(A) are incurred for the care of a dependent of the participant;

(B) are paid or payable to a dependent care service provider or to the participant as reimbursement for such expenses; and

(C) are incurred to enable the participant to be gainfully employed for any period for which there are one or more dependents with respect to the participant. Dependent care expenses shall not include expenses incurred for the services outside the participant's household for the care of a dependent, unless such dependent is a dependent under the age of 13 with respect to when the participant is entitled to a tax deduction under the Code, §151, or a dependent who is physically or mentally incapable of self support. In the event that the expenses are incurred outside the dependent's household, the dependent must spend at least eight hours each day in the participant's household. Dependent care expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

(12) Dependent care service provider--A person or a dependent care center (as defined in the Code, §21) who provides care or other services described in the definition of "dependent care expenses" in this section, but shall not include:

(A) a related individual described in the Code, §129; or

(B) a dependent care center which does not meet the requirements of the Code, §21.

(13) Effective date of the plan--September 1, 1988.

(14) Election form--A paper or electronic form provided by the Employees Retirement System of Texas that is an agreement by and between the employer and the participant, entered into prior to an applicable period of coverage, in which the participant agrees to a reduction in compensation for purposes of purchasing benefits under the plan.

(15) Eligible employee--An employee who has satisfied the conditions for eligibility to participate in the plan in accordance with the plan and §85.3(a)(1), and (b)(1) of this title (relating to Eligibility and Participation), and, to the extent necessary, a retired or terminated employee who is entitled to benefit payments under the plan.

(16) Employee--A person who is eligible to participate in the Texas Employees Group Benefits Program as an employee.

(17) Employer--The State of Texas, its agencies, commissions, institutions of higher education, and departments, or other governmental entity whose employees are authorized to participate in the Texas Employees Group Benefits Program.

(18) Expenses incurred--Expenses for services received or performed and for which the participant is legally responsible.

(19) Executive director--The executive director of the Employees Retirement System of Texas.

(20) Flexible benefit dollars--The dollars available to a participant which may be used for purposes of purchasing benefits under the plan.

(21) Grace period--A two (2) month and 15 day period, adopted by the TexFlex plan pursuant to IRS Notice 2005-42, immediately following the end of the plan year during which participants may continue to incur expenses for reimbursement from the prior year account balance. The grace period does not apply to a health care reimbursement plan year that begins on or after September 1, 2014, but does apply to the dependent care reimbursement plan.

(22) Health care expenses--Any expenses incurred by a participant, or by a spouse or dependent of such participant, for health care as described in or authorized in accordance with the Code, §105

and §213, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense by insurance or other means. The types of expenses include, but are not limited to, amounts paid for hospital bills, doctor bills, prescription drugs, hearing exams, vision exams, and eye exams.

(23) Health care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(24) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits).

(25) Institution of higher education--All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System.

(26) Leave of absence without pay--The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, and who does not receive any compensation for that month.

(27) Option--Any specific benefit offering under the plan.

(28) Participant--An eligible employee who has elected to participate in the plan for a period of coverage.

(29) Period of coverage--The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

(30) Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the state of Texas and any amendments which may be made to the plan from time to time. The plan is referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan, ~~and~~ an insurance premium conversion plan, and a qualified transportation benefit plan.

(31) Plan administrator--The board of trustees of the Employees Retirement System of Texas or its designee.

(32) Plan year--A 12-month period beginning September 1 and ending August 31.

(33) Run-out period--The period following the end of the plan year between September 1 and December 31, during which participants may file claims for reimbursement of expenses incurred during the plan year.

(34) Statutory nontaxable benefit--A benefit provided to a participant under the plan, which is not includable in the participant's taxable income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

(35) Spouse--The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(36) TexFlex--The flexible benefits plan adopted by the board of trustees.

(37) Texas Employees Group Benefits Program--The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to the Texas Insurance Code, Chapter 1551. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, and dental insurance coverages.

(38) Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who enroll in either the health care reimbursement plan, dependent care reimbursement plan or both.

#### §85.4. *Separate Plans.*

(a) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(a), 85.5(a), 85.5(c), 85.7, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19.

(b) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(b), 85.5(a), 85.5(b), 85.7, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19.

(c) Insurance Premium Conversion Plan--A separate plan under §105(b) of the Code designed to provide insurance premium conversion as described in §81.7(f). The Insurance Premium Conversion Plan is intended to comply with the Internal Revenue Code, §79 and §106.

(d) Qualified transportation benefit plan--A separate plan under the Code, §132, approved by the board of trustees, and designed to provide payment or reimbursement for certain transportation expenses. The qualified transportation benefit plan is governed by a plan document as executed and approved by the Executive Director, and as amended hereafter. A copy of the plan document may be obtained from the Employees Retirement System of Texas on request.

#### §85.7. *Enrollment.*

(a) Election of benefits.

(1) An eligible employee may elect to participate in the health care and/or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) An employee who becomes eligible after the beginning of a plan year has 30 days from the date of eligibility to elect or decline benefits by executing an election form.

(3) By enrolling in the plan, the employee agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus any administrative fee.

(5) An annual enrollment period will be designated by the Employees Retirement System of Texas and shall be prior to the beginning of a new plan year. The annual enrollment period shall provide an opportunity to change and to elect or decline benefit options.

(6) An active employee who is enrolled in reimbursement accounts immediately prior to the annual enrollment period will be

automatically re-enrolled with the same elections and contribution amounts for the new plan year unless the active employee takes action during the annual enrollment period to change contribution amounts or to decline participation.

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive an election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to:

(A) receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation; or

(B) in the case of automatic re-enrollment during the annual enrollment period, to continue participation in the reimbursement accounts with the same contributions for the new plan year.

(2) To the extent an eligible employee does not elect the maximum permissible participation amounts hereunder, he shall be deemed to have elected cash compensation.

(c) Benefit election irrevocable except for qualifying life event.

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and the change in election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event.

(2) A qualifying life event occurs when an employee experiences one of the following changes:

(A) change in marital status;

(B) change in dependent status;

(C) change in employment status;

(D) change of address that results in loss of benefits eligibility;

(E) change in Medicare or Medicaid status, or Children's Health Insurance Program (CHIP) status;

(F) significant cost of benefit or coverage change imposed by a third party provider other than a provider through the Texas Employees Group Benefits Program; or

(G) change in coverage ordered by a court.

(3) An election form requesting a change in election must be submitted on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP status under paragraph (2) of this subsection must be submitted on, or within 60 days after, the change in CHIP status.

(4) A change in election as provided in this subsection becomes effective on the first day of the month following the date of the qualifying life event.

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty employee shall be recovered through payroll withholding at least monthly during the plan year and remitted to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, and except as otherwise provided in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation), flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the employee or upon the return of the

employee to active duty status from payroll withholding, for the total amount due.

(2) An employee's flexible benefit dollars with respect to any month during the plan year shall be equal to the authorization on the employee's election form plus any administrative fees.

(3) Flexible benefit dollars received by the Employees Retirement System of Texas shall be credited to the participant's dependent care reimbursement account and/or health care reimbursement account, as appropriate.

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Except as provided by subsection (g) of this section, any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year, shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(3) An unexpended balance in an amount of \$25 or less is not eligible for carryover under subsection (g) of this section, and shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(f) Reimbursement report to participant. The plan administrator or its designee may provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year. These reports may be provided periodically through electronic means.

(g) Carryover of unexpended balances. Pursuant to IRS Notice 2013-71, for a plan year beginning on or after September 1, 2014, a participant may carry over up to \$500 of unspent flexible benefit plan dollars to the immediately following plan year. The flexible benefit dollars carried over may be used to pay or reimburse incurred expenses under the health care reimbursement plan during the entire plan year to which the dollars are carried over. A participant is entitled to carry over a maximum of \$500, and any balance in excess of this amount is forfeited as provided by subsection (e) of this section.

§85.9. *Payment of Claims from Reimbursement Accounts.*

(a) Claim for reimbursement.

(1) Claims for reimbursement of expenses incurred during an eligible employee's period of coverage in the plan year may be submitted at any time during the plan year, but not later than December 31 following the close of the plan year.

(2) Claims shall be paid to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year, in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) Expenses incurred prior to becoming a participant or after the last day of a plan year, shall not be covered by this plan. A terminated participant may continue to file claims for eligible expenses incurred during the employee's period of coverage within the plan year, if applicable, to exhaust reimbursement account balances no later than December 31 following the close of the plan year.

(4) Claims shall be submitted in a manner prescribed by the Employees Retirement System of Texas or its designee, accompanied by such bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) A claim form must be submitted each time reimbursement or payment is requested, unless using the debit card.

(6) The dependent care and health care reimbursement accounts are separate accounts, and funds from one account may not be used to reimburse expenses of the other account.

(b) Debit Card transactions.

(1) Debit card payments for eligible expenses incurred during a participant's period of coverage in the plan year may occur at any time during the plan year.

(2) Transactions shall be processed to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) Expenses incurred prior to becoming a participant shall not be covered by this plan. Expenses incurred by a participant may be covered only in the plan year in which the expense is actually incurred. Upon a participant's termination, the debit card will be automatically deactivated. Paper claims may be filed for eligible expenses incurred during the participant's period of coverage within the plan year in which he was a participant. All claims for reimbursement from account balances must be filed no later than December 31 immediately following the close of the plan year.

(4) Participants may be required to submit bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) Reimbursements or payments made using the debit card may require additional supporting documentation as may be requested by the plan administrator or its designee, and the participant must maintain his own records to substantiate the eligibility of all expenses for individual income tax purposes, if necessary.

(c) Reimbursement of claims to participants.

(1) Payment of eligible expenses shall be made directly to the participant by the plan administrator or its designee unless payment for dependent or health care expenses is made directly to the applicable provider through use of a debit card, other similar technology, or other means approved by the plan administrator.

(2) The plan administrator may establish or waive the minimum payment as deemed necessary.

(3) Reimbursements to participants or dependent care providers shall be made at least once each month.

(4) Dependent care reimbursement shall at no time exceed the greater of the balance of the participant's account for the plan year at the time of the reimbursement, or an amount equal to the monthly salary reduction amount.

(5) Health care reimbursement shall at no time exceed the eligible employee's election for the eligible period of coverage in the plan year.

(d) Participant's responsibility.

(1) An employee or former employee will be held liable for any overpayments of benefits as a participant in the reimbursement accounts. The method of repayment shall be determined by the plan administrator or its designee, and until full restitution is made by the participant, no further claims payment from any TexFlex accounts will be made to the participant by the plan administrator or its designee.

(2) A health care reimbursement account participant who ~~[goes on leave without pay or]~~ has insufficient funds during the plan year is liable for the monthly health care election amount and must pay for it with after-tax dollars, unless as described in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation). Should the participant fail to contribute to the account with after-tax dollars, upon the participant's return to active duty, payroll deduction will be required to recover the election amounts due.

§85.13. *Funding.*

(a) Expenses of administration. Any expenses incurred in the administration of the flexible benefits plan will be paid from the State Employees Cafeteria Trust Fund. An administrative fee to defray costs of administering the plan may be imposed on any, or each, reimbursement account as the board of trustees determines to be necessary.

(b) Contributions.

(1) Contributions to the flexible benefits plan by active duty employees may be made only through payroll salary reduction. An employee who elects to participate in the health care and dependent care reimbursement plans must authorize, on an election form, the exact amount of salary reduction, in addition to any monthly administrative fee.

(2) Eligible health care reimbursement account participants on inactive employment status must continue to contribute to their health care reimbursement account with after-tax dollars paid directly to the Employees Retirement System of Texas in the exact amount of the election, plus any administrative fees.

(3) The minimum amount a participant may elect to reduce his salary on a monthly basis for each reimbursement account is \$15. The maximum amount an employee may elect to reduce his salary on a monthly basis for each reimbursement account is limited to the amount stipulated in §85.5(b) and (c) of this title (relating to Benefits). Any administrative fee for a reimbursement account is in addition to these minimum and maximum amounts.

(4) When a participant receives no salary in a pay period, no salary reduction will be made for that pay period and no catch-up salary reduction will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursements Accounts) for health care reimbursement account participants.

(5) In situations where there are insufficient salary dollars to fund the amount of the salary reduction and fees, no salary reduction will be made, except as indicated in paragraph (6) of this subsection, for that pay period and no catch-up reduction will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursement Accounts) for health care reimbursement account participants.

(6) In the event an employee has elected to participate in more than one flexible benefits plan optional benefit and the employee's pay is sufficient to pay for one or more, but not all of the flexible benefits plan contributions, then payment of the flexible benefits plan contributions shall be made in the following order: health care reimbursement and dependent care reimbursement.

(7) If a participant elects to change contributions due to a qualifying life event (QLE), the plan administrator shall reimburse eligible claims based on the contribution in place when they occurred. Claims incurred during the initial enrollment period shall be reimbursed up to the amount of the participant's original contribution election. The plan administrator shall treat the remainder of the plan year following the QLE as a new coverage period, and claims incurred in this time period shall be reimbursed up to the amount of the new contribution election.

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

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505930

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: February 7, 2016

For further information, please call: (877) 275-4377



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

##### SUBCHAPTER B. SCHOOL BUS DRIVER QUALIFICATIONS

###### 37 TAC §14.12, §14.14

The Texas Department of Public Safety (the department) proposes amendments to §14.12 and §14.14, concerning School Bus Driver Qualifications. The proposed amendments update the rules to reflect the revised Medical Examination Report Form for Commercial Driver Medical Certification and School Bus Drivers' Driving Record Evaluation as the current publications. Additional nonsubstantive changes have been made to update the rules.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules regarding School Bus Driver Qualifications.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Rebecca Rocha, School Bus Transportation Program, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525, (512) 424-7395. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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, §521.022, which authorizes the department to adopt rules to administer and enforce the school bus driver qualifications.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.022 are affected by this proposal.

###### §14.12. *Medical Qualifications.*

A person shall not drive a school bus, school activity bus, or multifunction school activity bus unless he/she is physically qualified to do so. Each school bus driver shall undergo and successfully complete an annual physical examination in accordance with the requirements of Title 49, Code of Federal Regulations, Parts 391.41 and 391.43, which list those physical and mental conditions for which the medical examiner is directed to disqualify an applicant. The results of the examination shall be noted on the Medical Examination Report Form for Commercial Driver Medical Certification [~~Fitness Determination form~~] as published by the United States Department of Transportation (DOT), Federal Motor Carrier Safety Administration in Title 49, Code of Federal Regulations, Part 391.43 according to the figure in this section. A driver shall not operate a school bus, school activity bus, or multifunction school activity bus unless he/she has in their possession the original, or a photographic copy, of a valid medical examiner's certificate stating that he/she is physically qualified to drive a school bus, school activity bus, or multifunction school activity bus.

Figure: 37 TAC §14.12

[Figure: 37 TAC §14.12]

###### §14.14. *Minimum Driving Record Qualifications.*

(a) The ~~following~~ standards, as detailed in this section, have been established by the department as minimum requirements to be met by each person seeking to become employed or to remain employed as a school bus driver to drive any motor vehicle while in use as a school bus for the transportation of students.

(b) Pre-employment Inquiries. Each employer shall make ~~the following~~ investigations and inquiries, as detailed in this subsection, with respect to each school bus driver it employs:

(1) An applicant for employment as a school bus driver must disclose to the employer any violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the

applicant was convicted or forfeited bond or collateral during the three years preceding the date the application is submitted; any serious traffic violations, as defined in Texas Transportation Code, §522.003(25), of which the applicant was convicted during the ten years preceding the date the application is submitted; and any suspension, revocation, or cancellation of any driving privilege that the applicant has ever received.

(2) An inquiry into the school bus driver's complete driving record to the department and also to any other state(s) in which the school bus driver applicant held a motor vehicle operator's license or permit within the past seven years. If no previous driving record is found to exist, the employer must document their efforts to obtain such information, and certify that no previous driving record exists for that individual. The applicant's driving record shall be reviewed to determine whether that person meets minimum requirements as described in subsection (d) of this section.

(c) Annual inquiry and review of driving record.

(1) Each employer or designated person shall, at least once every twelve months, make an inquiry into the complete driving record of each school bus driver it employs to the department and also to any other state(s) in which the individual held a motor vehicle operator's license or permit during that time period.

(2) Each employer shall, at least once every twelve months, review the driving record of each school bus driver it employs to determine whether that school bus driver meets minimum requirements as described in subsection (d) of this section.

(d) School Bus Driver's Driving Record Evaluation. In determining a person's eligibility to drive a school bus, any person who has accumulated ten or more penalty points shall be considered ineligible to transport students until such time as he/she may become qualified. The [following] standards detailed in the figure in this subsection shall apply in assessing penalty points for convictions of traffic law violations and crash involvements appearing on his/her current driving record:

Figure: 37 TAC §14.14(d)

[Figure: 37 TAC §14.14(d)]

(1) convictions for violations included in Table I shall be assessed one penalty point for each occurrence if the date of the violation is within three years of the date of the driving record evaluation;

(2) crash involvements included in Table II shall be assessed two penalty points if the date of occurrence is within three years of the date of the driving record evaluation. Persons disqualified because of penalty points assessed for crash involvement shall be notified of their right to a review;

(3) convictions for violations included in Table III shall be assessed three penalty points for each occurrence if the date of the violation is within three years of the date of the driving record evaluation;

(4) convictions for violations included in Table IV shall be assessed ten penalty points for each occurrence if the date of the violation is within ten years of the date of the driving record evaluation; and

(5) convictions for violations included in Table V shall be assessed ten penalty points for each occurrence if the date of the violation is within ten years of the date of the driving record evaluation.

(e) The assessment of penalty points is not required for any entry which does not appear in the alphabetized table listings. However, any entry which is deemed comparable to one appearing in these tables shall be assessed an equivalent number of penalty points.

(f) Appeal procedure for assessment of points due to crash involvement. Two points shall automatically be assessed for a crash

involvement occurring within three years of the date of the driver record evaluation which appears on the driver history record. Applicants assessed two points for crash involvements appearing on their driving record may request a review by the person designated by the employer to determine if they were a cause of the crash(es). The applicant must identify the specific crash involvement(s) to be reviewed. Request a copy of the crash report(s) on the approved form. Mail the form to Crash Records, Texas Department of Transportation at the address listed on the form or obtain the crash report(s) from the Texas Department of Transportation's Crash Report Online Purchase System at <http://www.txdot.gov/driver/laws/crash-reports.html>. The designated person shall review information pertinent to the crash(es), which should include the Texas Peace Officer's Crash Report. In examining this report, consideration of such items as Charges Filed, Investigator's Narrative of What Happened, Diagram, and Factors/Conditions Contributing to the Crash should assist in making a determination as to whether or not the assessment of penalty points is appropriate. If the designated person reviews the crash report and any other pertinent information and determines that the applicant was not a cause of the crash(es), no penalty points shall be assessed. If the designated person determines that the applicant was a cause of the crash(es), two penalty points shall be assessed for each crash. The decision of the employer is final.

(g) Disqualifications. A school bus driver who is disqualified shall not drive a school bus, school activity bus, or multifunction school activity bus. An employer shall not require or permit a driver who is disqualified to drive a school bus, school activity bus, or multifunction school activity bus.

(1) A school bus driver is disqualified for the duration of the driver's loss of his/her privilege to operate a motor vehicle either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A school bus driver who receives a notice that his/her license, permit, or privilege to operate a motor vehicle has been revoked, suspended, or withdrawn shall notify the employer that employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

(h) Mandatory Disqualifying Offenses. A person shall be considered disqualified from operating a school bus, school activity bus, or multifunction school activity bus for the following:

(1) A conviction of the offenses detailed in this paragraph within the 10-year period preceding the date of the check of the person's driving record:

[(+ Within the 10-year period preceding the date of the check of the person's driving record for a conviction of the following offenses detailed in this paragraph:]

- (A) Texas Penal Code, §49.04; or
- (B) Texas Penal Code, §49.045; or
- (C) Texas Penal Code, §49.07; or
- (D) Texas Penal Code, §49.08.

(2) A suspension, disqualification, or prohibition order issued as a result of any alcohol-related or drug-related enforcement contact, as defined in the Texas Transportation Code, §524.001, during the ten years preceding the date of the check of the person's driving record.

(i) Credit for concurrent suspension arising from same drug or alcohol-related incident. If a criminal conviction occurs that arises

out of the same arrest as the Administrative License Revocation suspension/disqualification, the disqualification period arising out of the same arrest shall not be longer than ten years.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505850

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



## SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

### 37 TAC §14.52

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC §14.52(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 8, 2016, issue of the Texas Register.)*

The Texas Department of Public Safety (the department) proposes amendments to §14.52, concerning Texas School Bus Specifications. The proposed amendment updates the rule to reflect the 2016 Texas School Bus Specifications as the current publication.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules regarding Texas School Bus Specifications.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Rebecca Rocha, School Bus Transportation Program, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525, (512) 424-7395. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

Texas Government Code, §411.004(3) and Texas Education Code, §34.002, and Texas Transportation Code, §547.102 and §547.7015 are affected by this proposal.

#### §14.52. Texas School Bus Specifications.

(a) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all school buses offered for sale to or use by the public school systems in Texas meet or exceed all standards, specifications, and requirements as specified in the department's publication Texas School Bus Specifications. The department hereby adopts the Texas School Bus Specifications for 2016 [2013] Model School Buses. Previously published Texas School Bus Specifications remain in effect for earlier model year school buses until the department repeals these publications.

Figure: 37 TAC §14.52(a)

[Figure: 37 TAC §14.52(a)]

(b) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all multifunction school activity buses offered for sale to or use by the public school systems in Texas meet or exceed all federal standards, specifications, and requirements of a multifunction school activity bus as specified in the Title 49, Code of Federal Regulations, Part 571.

(1) A multifunction school activity bus may be painted any color except National School Bus Glossy Yellow.

(2) A multifunction school activity bus cannot be used for home to school or school to home transportation. Before delivery of a multifunction school activity bus, the manufacturer must place a label in the direct line of site of the driver while seated in the driver's seat stating: 'This vehicle is not to be used for home to school or school to home transportation.'

(c) Any new school bus found out of compliance with the specifications that were in effect in Texas on the date the vehicle was manufactured will be placed out of service by the vehicle's owner until it is brought into compliance with the applicable specifications.

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

Filed with the Office of the Secretary of State on December 21, 2015.



## CHAPTER 15. DRIVER LICENSE RULES

### SUBCHAPTER A. LICENSING REQUIREMENTS

#### 37 TAC §15.7

The Texas Department of Public Safety (the department) proposes amendments to §15.7, concerning Occupational License (Essential Need). These amendments are intended to clarify that an occupational order from the court is now valid for a period of 45 days pursuant to Texas Transportation Code, §521.249. Further proposed amendments are made to clarify which courts are allowed to issue an occupational court order, and amendments also change the language that indicates a customer submits an "application" to a customer submits a "request for an occupational extension" to extend the expiration of the occupational license. These changes also comply with Chapter 521, Subchapter L.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be an extension of the validity of the occupation order from 30 to 45 days.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this amendment. Accordingly, the Department is not required to complete a takings impact assessment.

Comments on the proposal may be submitted to Heather Strawn, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Com-

ments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.249, which changed the expiration of an occupational court order from 30 days to 45 days.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

#### *§15.7. Occupational License (Essential Need).*

(a) An occupational license [~~authorizes the driving of any non-commercial motor vehicle subject to the restrictions imposed and~~] is a special license issued, upon authorization by a Justice of the Peace, County or District [~~district court or county~~] court, that authorizes the driving of any non-commercial motor vehicle subject to the court restrictions. [~~It may authorize the driving of any noncommercial motor vehicle.~~]

~~[(1) in the performance of an occupation or trade or transportation to and from such occupation or trade;]~~

~~[(2) for transportation to and from an educational facility in which the person is enrolled; or]~~

~~[(3) in the performance of essential household duties.]~~

(b) The occupational license holder must [~~person issued an occupational license is required to~~] carry a certified copy of the court order that shows [~~showing~~] the restrictions imposed by the court and [~~along with~~] the occupational license issued by the department. The occupational license holder [~~and~~] is required to show the court order and license to a peace officer on request.

(c) The basic requirements for [~~the~~] issuance of an occupational license are:

(1) a certified copy of petition and a certified copy of a legally issued court order [~~finding an essential need~~] for operating a non-commercial motor vehicle [~~as provided in subsection (a) of this section and setting forth the conditions for such driving~~];

(2) the filing of an SR-22 and [~~the~~] maintenance of [~~such proof of~~] financial responsibility; and

(3) the payment of all required reinstatement fees.

(d) The fee is \$10 for [~~up to~~] one year or less. If the suspension or revocation is more than one year and permitted by the court order, the applicant may apply for a two year occupational license [~~if permitted by the court order~~] and submit [~~submits~~] an additional \$10 fee for the second year. Automatic suspensions and effective safety responsibility suspensions require an additional statutory reinstatement fee with the SR-22 form. [~~If the suspension is an automatic suspension or a safety responsibility suspension which has become effective, an additional statutory reinstatement fee is required with the SR-22 form.~~]

~~[(e) The expiration date will be shown on the license and will be the first of the following dates:]~~

~~[(1) when the suspension ends; or]~~

~~[(2) first anniversary of the court order granting the occupational license, unless the applicant submitted the additional fee for the subsequent year.]~~

(e) [(f)] A certified copy of the court order by itself may be used as a restricted license for up to 45 [a period of 30] days from the date of the order.

(f) [(g)] If the suspension or revocation is still in effect after the expiration of the occupational license, the individual may submit a request for occupational extension with [apply to renew the occupational license for one year by submitting an application and] a \$10 fee. The applicant must have either the original court order or a separate court order [a court order] authorizing the occupational license for the extended period of time. [This can either be the original court order granting the occupational license for the entire suspension or revocation period or a separate court order extending the time period for the occupational license.]

(g) [(h)] An occupational license cannot authorize the operation of a commercial motor vehicle.

(h) [(i)] The department will notify the licensee of the cancellation and any[- Any] subsequent occupational license issuance will require a court order addressing the new suspension or revocation [suspension/revocation] action.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505852

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



## SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

### 37 TAC §15.23

The Texas Department of Public Safety (the department) proposes the repeal of §15.23, concerning Names. The repeal of §15.23 is filed simultaneously with the proposed new §15.23.

This repeal and proposed new rule is intended to clarify the options for customers when determining the names to be used on driver licenses and personal identification certificates. The new rule also updates language to reflect court rulings and the creation of new names under the laws of other states.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this repeal is in effect, the public benefit anticipated as a result of this repeal will be the establishment of clearer guidelines for the names allowed on Texas driver licenses and personal identification certificates.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this repeal. Accordingly, the Department is not required to complete a takings impact assessment.

Comments on the proposal may be submitted to Chris Sawyer, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.142, which requires that the application include the applicant's full name.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.23. Names.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505853

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



### 37 TAC §15.23

The Texas Department of Public Safety (the department) proposes new §15.23, concerning Names. The creation of new §15.23 is filed simultaneously with the proposed repeal of current §15.23. This new rule is intended to clarify the options for customers when determining the names to be used on driver licenses and personal identification certificates. This rule also

updates language to reflect court rulings and the creation of new names under the laws of other states.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be the establishment of clearer guidelines for the names allowed on Texas driver licenses and personal identification certificates.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Department is not required to complete a takings impact assessment.

Comments on the proposal may be submitted to Chris Sawyer, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.142, which requires that the application include the applicant's full name.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.23. Names.

(a) An applicant's full name is required on all applications for a driver license or a personal identification certificate. No names will be used that have not been documented. Name changes performed under the laws of another state are recognized. This section is applicable to male and female applicants.

(b) Persons who currently possess a Texas driver license (DL) or personal identification certificate (ID) and requests that they be allowed to change their name may apply for a duplicate Texas DL or ID and exercise the same privilege in name selection as original applicants.

(c) Foreign language names will be spelled as they appear on the identification documents presented. For example, Perez, Juan must be used on the DL or ID. The English version (Perez, John) will not be substituted for the actual name.

(d) Ecclesiastical names such as Brother Thomas, Sister Mary, or Father Kelly are not used.

(e) Name changes under subsection (b) of this section for reasons other than marriage, divorce, annulment, or death of a spouse require a court order from a court of record verifying such change and the name shown on the order is acceptable.

(f) Surnames.

(1) An applicant may choose to use the birth surname, adopt the surname of his or her spouse, adopt the surname of a previous spouse, adopt a hyphenated version of his or her surname and a spouse's surname, or use a surname created by marriage in another state.

(2) An applicant with multiple surnames may choose the surname that is used. An applicant with a hyphenated surname may choose to use only one of the names as a surname.

(3) If a married applicant chooses not to adopt a spouse's surname, the name will be listed as if unmarried on the application.

(4) When a change of name occurs as a result of marriage, divorce, annulment, or by the death of a spouse, the licensee may choose to keep the married name, or adopt another documented surname.

(g) First names. The first name of the applicant must be used as the first name on the application, even if the applicant normally uses a middle name as the given name. Middle names are not substituted for first names.

(h) Middle names. An applicant may use the birth surname, or another documented surname, instead of or in addition to the middle name. Two names may be used.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505855

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



**37 TAC §15.42**

The Texas Department of Public Safety (the department) proposes amendments to §15.42, concerning Social Security Number. These amendments are intended to clarify that a Social Security number is now required for an identification certificate pursuant to Texas Transportation Code, §521.142.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be additional security in the issuance process of a Texas personal identification certificate.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this amendment. Accordingly, the Department is not required to complete a takings impact assessment.

Comments on the proposal may be submitted to Heather Strawn, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [LDrulecomments@dps.texas.gov](mailto:LDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.142, which requires the applicant's Social Security number for an identification certificate.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

*§15.42. Social Security Number.*

(a) The Social Security [social security] number (SSN) shall be obtained from all applicants who have been issued a number by the United States Social Security Administration. This number will be utilized by the department for the purpose of additional identification and may be disclosed only to those entities that have statutory authority to receive the SSN [social security number]. This includes the Child Support Division of the Office of the Attorney General - State of Texas, the United States Selective Service Administration, and the Texas Secretary of State].

(b) When an SSN [social security number] is originally obtained, it is mandatory that documentation be provided to verify the number. All documents presented for proof of SSN must be verifiable through the issuing entity and include a pre-printed SSN. Documentation may include:

- (1) Federal issued Social Security card [Card],

~~{(2) Health Card (if member number represents Social Security Number),}~~

~~{(3) Pilot's license,}~~

~~(2) [(4)] Military identification (Applies to active, reserve and dependent status),~~

~~(3) Certificate of Release or Discharge of Active Duty (DD-214),~~

~~{(5) Peace officer's license - Texas Commission on Law Enforcement Officer Standards and Education,}~~

~~{(6) DD-214,}~~

~~{(7) Medicare/Medicaid Cards,}~~

~~(4) [(8)] Certified college/university transcript designating number as SSN,~~

~~(5) IRS form W-2 Wage and Tax Statement,~~

~~(6) IRS form 1099-MISC,~~

~~(7) Pay stub containing applicant's name and SSN, or~~

~~(8) Documents such as health insurance cards, Veteran's Administration cards, and pilot's licenses with identifiable SSN may be accepted.~~

~~{(9) Veteran's administration card with social security number preprinted on card.}~~

(c) On all duplicate and renewal Texas driver license or identification certificate applications, the documented SSN [social security number] shall be obtained where it is not currently a part of the applicant's [driving] record. After the SSN [social security number] becomes a part of the applicant's [driver license] record, all future duplicate and renewal transactions occurring in a driver license office will be verified verbally for the correct SSN [social security number]. Should the SSN [social security number] on record not match the number provided, the applicant will be required to provide acceptable documentation as listed in subsection (b) of this section [above for verification].

(d) The department may verify the authenticity of the SSN [social security numbers] on record through the Social Security Administration. In the event that the SSN [social security number] on record cannot be authenticated, the department may deny issuance of the renewal, duplicate or original transaction until such time as authentication is made through the Social Security Administration. If the license or identification certificate was previously issued, the department may mail to the address on record a notice requiring the license or identification certificate holder to provide additional documentation. Failure to comply with this request within 30 days may result in the cancellation of the driver license or identification certificate.

~~{(e) Applicants for an identification certificate will be asked to provide verification of SSN documentation. If the applicant fails or refuses to provide that social security information, the identification certificate will be issued without such documentation unless state or federal statute requires otherwise.}~~

(e) [(f)] Applicants who state they have not applied for, have not been issued or do not have a SSN [social security number] assigned by the Social Security Administration will be given the department's "Social Security" affidavit for completion. This sworn affidavit will contain:

- (1) The applicant's full name, date of birth, and driver license or identification certificate number;

(2) A statement that the applicant has not applied for, been issued or assigned an SSN [social security number] by the United States Social Security Administration;

(3) A statement of release for verification and investigative purposes;

(4) A notice that failure to provide required information to the department may result in the cancellation of the applicant's driver license or identification certificate per Texas Transportation Code, §521.314; and

(5) A notice that the applicant can be subject to other criminal penalties including Texas Transportation Code, §521.451 and §521.454.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505856

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



## SUBCHAPTER C. EXAMINATION REQUIREMENTS

### 37 TAC §15.55

The Texas Department of Public Safety (the department) proposes amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. These amendments are intended to clarify conditions under which exam requirements will not be waived when a driver education certificate is presented that is dated more than two years prior to the date of application. In addition, the language has been revised and reorganized for clarity.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be increased transparency and better understanding of the examination requirements for license issuance.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure that may adversely affect, in a material way, the economy,

a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this amendment. Accordingly, the Department is not required to complete a takings impact assessment.

Comments on the proposal may be submitted to Heather Strawn, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.55. *Waiver of Knowledge and/or Skills Exam [Tests].*

#### (a) Definitions.

(1) Knowledge exam--Written, computerized, or automated exam.

(2) Skills exam--Driving or road exam.

(3) Unrestricted Class A, B, and C license--A license that allows a person to operate a motor vehicle without having a restriction that requires a licensed driver 21 years of age or older in the front seat.

{(a) Knowledge and skills tests are waived for persons holding a valid out-of-state license when applying for a Texas license of the same or lower type. An applicant with a valid license will be required to pass the vision test. If an advance in grade is applied for, the applicant must pass the vision test and appropriate knowledge and skills tests. For applicants with an expired out-of-state license or no license, the complete examination will be given, including the skills test.}

(b) Required completion of the knowledge and/or skills exams.

(1) [(b)] The skills exam [test] will not be waived for applicants under the age of 18.

(2) Applicants less than 25 years of age who present driver education completion certificates dated two or more years prior to the date of application will not have any examinations waived. These certificates are acceptable as proof of driver education completion.

(3) If an advance in grade is applied for, the applicant must pass the vision exam and appropriate knowledge and skills exams.

(4) For applicants with an expired out-of-state license or no license, the applicant must pass the vision, knowledge, and skills exams.

#### (c) Waiver of the knowledge and/or skills exams.

[(e) Knowledge and/or skills tests are waived under the conditions detailed in this subsection:]

(1) Noncommercial driver license:

[(1) The skills test is waived for applicants who hold a valid driver license from another state, territory, province of Canada, or United States Armed Forces license.]

(A) Knowledge and skills exams are waived for applicants who hold a valid license from another U.S. state, U.S. territory, or province of Canada when applying for a Texas License of the same or lower type. An applicant with a valid license will be required to pass the vision exam.

(B) The skills exam is waived for applicants who hold a valid U.S. military or Armed Forces license.

(2) Class M license restricted to Moped:

(A) The Class M knowledge exam is required for all applicants.

(B) The skills exam is not required.

(3) Class M License:

(A) The Class M knowledge exam is waived for applicants who have successfully completed a department approved motorcycle operator training course.

(B) [(2)] The skills exam [test for a motorcycle license] is waived for individuals age 18 and over who have a valid, unrestricted Class A, B, or C Texas driver license [Driver License] and have successfully completed a department approved motorcycle operator training course. [A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8) or a completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards will be used as proof of successful completion of a department approved motorcycle operator training course. The skills test is not required for all applicants for a motorcycle license restricted to Moped. All other applicants for a motorcycle license must take and pass a skills test for a motorcycle license. Unrestricted Class A, B, and C license means a license that allows a person to operate a motor vehicle without having a restriction that requires a licensed driver 21 years of age or older in the front seat.]

(C) All other applicants must take and pass a skills exam for a motorcycle license.

[(3) The Class M knowledge test is required for applicants for a Class M license restricted to Moped. The Class M knowledge test is waived for individuals applying for an unrestricted Class M license, a Class M license restricted to three-wheeled motorcycles, or a Class M license restricted to Motor-Driven Cycle if the individual successfully completes a motorcycle operator training course and presents:]

(D) An applicant must present either items detailed in this subparagraph to confirm successful completion of a department approved motorcycle operator training course:

(i) [(A)] A valid Standardized Motorcycle Operator Training Course completion card [Motorcycle Operator Training Program Certificate of Completion] (Form MSB-8); or

(ii) [(B)] A valid completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards.

[(d) The term "knowledge test" means written, computerized, or automated tests. The term "skills test" means driving or road test.]

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505857

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



### **37 TAC §15.63**

The Texas Department of Public Safety (the department) proposes new §15.63, concerning Out of State Examinations and Applications. This rule is intended to eliminate redundancies and clearly outline requirements concerning out of state examinations and applications. The creation of new §15.63 is filed simultaneously with the proposed repeal of §15.93.

Suzu Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be the establishment of clearer guidelines for administering out of state examinations for those who are absent from their licensing state.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this amendment. Accordingly, the Department is not required to complete a takings impact assessment.

Comments on the proposal may be submitted to Chris Sawyer, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.63. Out of State Examinations and Applications.

(a) Driver license examinations and services may be provided to nonresidents at the request of the licensing jurisdiction or licensee to allow the licensing jurisdictions to renew, restrict, endorse, or reinstate a license for a person who is absent from that jurisdiction.

(b) The Department of Public Safety will conduct and honor driver license examinations and services for the agency responsible for the driver license programs in any U.S. state, U.S. territory, the District of Columbia, a Canadian province, or U.S. or Canadian military base located outside the continental limits of the U.S. and Canada.

(c) Examinations for the Department of State. Examinations for the United States Department of State will be conducted by driver license personnel for the issuance of a Department of State driver license. Examinations may include vision, knowledge, and skills examinations. Unless provided by the Department of State, Texas examinations will be administered. Examination results will be recorded on documents provided by the Department of State.

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505858

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



## SUBCHAPTER E. RECIPROCITY IN DRIVER LICENSING

### 37 TAC §§15.91 - 15.93

The Texas Department of Public Safety (the department) proposes the repeal of §§15.91 - 15.93, concerning Reciprocity in Driver Licensing. The repeal of §15.91 and §15.92 is intended to eliminate redundant language found in Texas Transportation Code, §§521.001, 521.028, 521.030 and delete outdated information. The repeal §15.93 is filed simultaneously with proposed new §15.63. These proposals move information regarding out of state examinations to 37 TAC Chapter 15, Subchapter C, eliminating redundancies and clearly outlining requirements concerning out of state examinations applications.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no an-

anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the establishment of clearer guidelines for the issuance of Texas driver license and identification cards to applicants from a foreign country, or another U.S. state, territory, or province of Canada.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Chris Sawyer, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is repealed 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, §§521.001, 521.028, and 521.030.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

*§15.91. International Reciprocity.*

*§15.92. Reciprocity in Driver Licensing.*

*§15.93. Out-of-State Examinations and Applications.*

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

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505859

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 7, 2016

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



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

# PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

## CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

### SUBCHAPTER E. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

#### DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §9.218 and new §9.218 in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to set forth the requirements a program provider in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition (ICF/IID) Program must comply with to voluntarily close a facility and, at the program provider's option, to request suspension of a closing facility's certified capacity for up to one year after the facility closes. For DADS to approve the suspension of certified capacity, the closing facility must meet certain requirements, including having a certified capacity of eight or less. To activate the suspended capacity, the program provider must submit an application for enrollment in the ICF/IID Program before the suspension period ends.

#### SECTION-BY-SECTION SUMMARY

The proposed new §9.218 sets forth the requirements a program provider in the ICF/IID Program must comply with to voluntarily close a facility and, at the program provider's option, to request suspension of a closing facility's certified capacity for up to one year after the facility closes.

The proposed repeal of §9.218 removes current rules related to facility closure.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section and repeal are in effect, enforcing or administering the new section and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section and repeal will not have an adverse economic effect on small businesses or micro-businesses because compliance with the new rule does not require a program provider to incur a cost.

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new section and repeal are in effect, the public benefit expected as a result of enforcing the new section and repeal is that a provider with suspended beds will be able to reopen a facility quickly by using suspended beds.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the new section and repeal. The new section and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Crystal Beard at (512) 438-2264 in DADS Regulatory Services. Written comments on the proposal may be mailed to Texas Register Liaison, Legal Services-15R06, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R06" in the subject line.

#### 40 TAC §9.218

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§9.218. *Licensure Action and Facility Closure.*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505899

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



#### 40 TAC §9.218

##### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

##### §9.218. Voluntary Facility Closure and Suspension of Certified Capacity.

(a) In this section, the terms "close" and "closure" refer to a facility ceasing to operate. The terms do not include temporarily relocating individuals who reside in a facility.

(b) Except as provided in subsection (c) of this section, if a program provider intends to voluntarily close a facility, the program provider must submit to DADS, at least 60 days before the facility closes, written notice of the program provider's intent to close the facility, which includes:

(1) the anticipated date of closure; and

(2) a description of how individuals who reside in the closing facility will be discharged and relocated to new residences.

(c) If, for reasons beyond the program provider's control, the program provider cannot provide the notice required by subsection (b) of this section at least 60 days before the program provider anticipates closing the facility, the program provider must state in the notice the reason why a shorter time period is necessary.

(d) The program provider must comply with §9.227 of this subchapter (relating to Discharge from a Facility).

(e) If a facility is closing, DADS imposes a vendor hold on payments due to the program provider under the provider agreement until an audit conducted in accordance with §9.269 of this subchapter (relating to Audits) is complete.

(f) A program provider that closes a facility may request that DADS suspend some or all of the facility's certified capacity for up to one year after the facility closes.

(g) To request that a facility's certified capacity be suspended:

(1) the facility's certified capacity must be eight or less;

(2) the facility must not be the subject of any proposed or pending enforcement action; and

(3) the program provider must:

(A) voluntarily close the facility; and

(B) submit a letter to DADS requesting suspension of the facility's certified capacity.

(h) A letter submitted in accordance with subsection (g)(3)(B) of this section must include:

(1) the legal name and address of the program provider;

(2) the closing facility's name and address;

(3) the facility's identification number;

(4) the facility's contract number;

(5) the facility's license number and expiration date, if the facility is licensed;

(6) the certified capacity of the facility;

(7) the certified capacity for which the program provider is requesting the suspension;

(8) the anticipated closure date of the facility;

(9) justification for the suspension of certified capacity; and

(10) a statement regarding the possible use of the certified capacity in the future.

(i) Within 30 days after DADS receives a program provider's letter, as described in subsection (g)(3)(B) of this section, DADS notifies the program provider in writing whether DADS has approved or denied the program provider's request to suspend capacity.

(j) If DADS approves a request to suspend capacity, the notification from DADS states:

(1) the period of time the capacity is suspended, which must not exceed one year;

(2) the effective date of the suspension;

(3) the certified capacity being suspended; and

(4) the capacity available, which must not exceed six per facility.

(k) After DADS approves a request to suspend capacity, DADS does not extend the period of time for which capacity is suspended.

(l) A program provider may not transfer a facility's suspended capacity to another entity.

(m) DADS may rescind its approval of a request to suspend certified capacity. If DADS rescinds its approval, the suspended capacity reverts to the control of DADS.

(n) A program provider does not receive an administrative hearing to challenge DADS denial of a request to suspend capacity or DADS rescission of its approval to suspend capacity.

(o) To activate a facility's suspended certified capacity, the program provider must submit an application for enrollment in the ICF/IID Program in accordance with Division 2 of this subchapter (relating to Provider Enrollment) before the suspension period ends. If a program provider does not submit an application for enrollment in the ICF/IID Program before the suspension period ends, the suspended capacity is not available to the program provider and reverts to the control of DADS. If DADS rejects a program provider's application for enrollment in the ICF/IID Program, the suspended capacity is not available to the program provider and reverts to the control of DADS.

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505900

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



## CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§44.102, 44.202, and 44.301, in Chapter 44, Consumer Managed Personal Attendant Services.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to amend Chapter 44 to update the consumer managed personal attendant services (CMPAS) rules related to interest lists. CMPAS are services under Title XX, Subtitle A of the Social Security Act. These amendments implement §531.0931 of the Texas Government Code, as added by Senate Bill 169, 84th Legislature, 2015, and align the rules with other DADS rules.

The proposed amendments describe how a person's name is added to a CMPAS interest list and how CMPAS interest lists are maintained. The proposed amendments require DADS to keep the name of a military family member who resides out of state on an interest list while a military member is on active duty or for up to one year after a former military member's active duty ends. The proposed amendments describe the conditions under which an applicant's name may be reinstated on an interest list after being removed and how an interest list request date is assigned, including when DADS reinstates an applicant's name to the interest list with the original request date. The proposed amendments also describe the notification the applicant receives from DADS regarding the reinstatement.

The proposed amendments require a provider, if a person contacts the provider to submit a request to add an applicant's name to a CMPAS interest list, to request specified information about the applicant and send the information and the date and time of the request to DADS. The proposed rules, for clarity, add a reference to the requirements a provider must comply with after

DADS refers an applicant to the region's provider. The proposed rules also clarify when the provider must begin providing services to an eligible individual. The proposal also updates terminology used in the subchapter.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §44.102 amends the definitions of "applicant," "Consumer Managed Personal Attendant Services," "DADS regional designee," "day," "financial management services agency," "interdisciplinary team," and "working days" for clarity. The proposed amendment also adds definitions for "DADS region," "former military member," "military member," and "military family member."

The proposed amendment to §44.202 changes the section title from "Applying for Services" to "CMPAS Interest Lists." The proposed amendment states that DADS maintains a CMPAS interest list, containing the names of applicants interested in the CMPAS Program, for each DADS region. If a person contacts a provider to add an applicant's name to an interest list, the proposed amendment requires the provider to request the information stated in the rule about the applicant and, if obtained, send the information to DADS, along with the date and time of the request, within five working days after the contact. The proposed amendment describes the circumstances under which DADS adds an applicant's name to a CMPAS interest list and describes how an interest list request date is assigned to the applicant. The proposed amendment also describes the circumstances under which DADS removes an applicant's name from a CMPAS interest list and may reinstate a name after it is removed. The proposed amendment also describes how an interest list request date is assigned when a name is reinstated on the interest list and states that DADS notifies the applicant of the reinstatement.

The proposed amendment to §44.301 states that when funding becomes available in a DADS region, DADS refers to the region's provider the applicant whose interest list request date is the earliest on the region's interest list. The proposed amendment states that the provider, after receiving the referral, must comply with §44.203. The proposed amendment also clarifies that the provider must begin providing services to an individual within seven days after the DADS regional designee enters the CMPAS authorization in DADS Service Authorization System.

### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

### PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from rules that more clearly address how an applicant's name is placed on a CMPAS interest list and how the CMPAS interest lists are maintained.

Ms. Jordan anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Heather Wolf at (512) 438-3501 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R03, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R03" in the subject line.

## SUBCHAPTER A. INTRODUCTION

### 40 TAC §44.102

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055 and §531.0931 and Texas Human Resources Code, §161.021.

#### §44.102. Definitions.

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

- (1) §1915(c)--A section of the Social Security Act that allows states to establish, by waiver of certain Medicaid requirements, alternative community-based services for individuals who qualify for institutional services.
- (2) Applicant--A Texas resident [person] who requests services under the CMPAS Program.
- (3) Assessor of need--A provider employee responsible for determining an applicant's or individual's need for CMPAS.
- (4) Attendant--A person who provides direct care to an individual.
- (5) Block grant option--One of three CMPAS Program service delivery and payment options. In the block grant option, the indi-

vidual is the employer of record of an attendant and the provider is the employer of record of a substitute attendant.

(6) Consumer directed services (CDS) option--One of three CMPAS Program service delivery and payment options. In the CDS option, the individual is the employer of record of the attendant and substitute attendant.

(7) CMPAS Program--Consumer Managed Personal Attendant Services [(CMPAS)] Program. [--]A DADS program for personal attendant services in which individuals manage their attendant services to varying degrees.

(8) Contract--The written agreement between DADS and a provider to provide services to individuals eligible under this chapter in exchange for payment.

(9) Contract manager--A DADS employee who is responsible for the overall management of a contract.

(10) DADS--The Department of Aging and Disability Services.

(11) DADS region--A region of Texas designated by DADS in which the CMPAS Program is available.

(12) [(14)] DADS regional designee--A DADS employee appointed by the DADS regional director of a [in each] DADS region [that offers CMPAS].

(13) [(12)] Day--A calendar day, including weekends and holidays [which includes a weekend day and holiday].

(14) [(13)] Family member--A person for whom an individual has a duty under state law to care for.

(15) [(14)] Financial management services agency--An entity that contracts [agency contracting] with DADS to provide financial management services, as defined in §41.103 of this title (relating to Definitions).

(16) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(17) [(15)] Health-related task--An activity of daily living, a health maintenance task, or a nursing task, as described in 22 TAC Chapter 225.

(18) [(17)] IDT--Interdisciplinary team. [(18)]--A designated group of persons that meets to discuss service delivery issues of an individual, as described in §44.502(a) of this chapter (relating to Convening an Interdisciplinary Team).

(19) [(16)] Individual--A person enrolled in the CMPAS Program.

(20) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(21) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(22) [(18)] Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(23) [(19)] Practitioner's statement--The DADS Practitioner's Statement of Medical Need form (DADS Form 3052).

(24) [(20)] Provider--A home and community support services agency that contracts with DADS to provide services under the CMPAS Program.

(25) [(21)] Representative--A person designated by an individual, such as the individual's spouse, relative, or friend; or the individual's legal representative.

(26) [(22)] Service plan--A document that lists the service tasks and states the hours of services agreed to by the individual and assessor of need.

(27) [(23)] State mental health facility--A state hospital or a state center with an inpatient psychiatric component operated by the Texas Department of State Health Services.

(28) [(24)] Substitute attendant--A person who, on a temporary basis and in place of an attendant, provides services to an individual.

(29) [(25)] Traditional service option--One of three CMPAS Program service delivery and payment options. In the traditional service option, the provider is the employer of record of the attendant and substitute attendant.

(30) [(26)] Working day [days]--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b) [Days DADS state office is open for business].

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505887

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



## SUBCHAPTER B. ELIGIBILITY AND SERVICE PLANS

### 40 TAC §44.202

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055 and §531.0931 and Texas Human Resources Code, §161.021.

§44.202. *CMPAS Interest Lists [Applying for Services].*

(a) DADS maintains a CMPAS interest list for each DADS region. An interest list contains the names of applicants who are interested in receiving services through the CMPAS Program.

(b) [(a)] A person may request that an applicant's name be added to a CMPAS interest list in a DADS region by contacting [To apply for the CMPAS Program, an applicant must contact]:

- (1) a provider;
- (2) a DADS regional office; or
- (3) the 2-1-1 Texas Program.

(c) [(b)] If a person [an applicant] contacts a provider, as described in subsection (b) of this section, [by the next working day] the provider must, in accordance with DADS instructions in the CMPAS Provider Manual available at [www.dads.state.tx.us](http://www.dads.state.tx.us), request [forward to the DADS regional office] the applicant's:

- (1) name;
- (2) a physical address in Texas and a mailing address;
- (3) birth date;
- (4) phone number [number(s) (if available)];
- (5) social security number [(if available)];
- (6) current living arrangements;
- (7) employment status;
- (8) DADS individual number [(if applicable)]; and
- (9) status regarding receipt of Supplemental Security Income. [(SSI); and]

[(10) date and time the information described in paragraphs (1) - (9) of this subsection was forwarded to DADS.]

(d) Within five working days after the contact described in subsection (b)(1) of this section, a provider must send to a DADS regional office:

- (1) the applicant information obtained in accordance with subsection (c)(1) - (9) of this section; and
- (2) the date and time the person contacted the provider.

(e) DADS adds an applicant's name to a CMPAS interest list if:

(1) a request is made in accordance with subsection (b) of this section; or

(2) an applicant's name is on the interest list for a DADS region and the applicant or a representative notifies DADS that the applicant has moved to another DADS region and requests that the applicant's name be added to the interest list for the DADS region to which the applicant has moved.

(f) DADS adds an applicant's name to an interest list with an interest list request date as follows:

(1) for a request to add an applicant's name to the interest list made in accordance with subsection (b) of this section, the date of the request; or

(2) for a request to add an applicant's name to the interest list made in accordance with subsection (e)(2) of this section, the date of the original request made in accordance with subsection (b) of this section.

(g) DADS removes an applicant's name from a CMPAS interest list if:

(1) the applicant or representative requests that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the applicant or representative declines an offer of CMPAS Program services, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(4) the applicant is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(5) the applicant is deceased; or

(6) DADS denies an applicant's eligibility for the CMPAS Program and the applicant has had an opportunity to exercise the applicant's right to request a fair hearing in accordance with §44.503 of this chapter (relating to Fair Hearing) and did not request a fair hearing, or requested a fair hearing and did not prevail.

(h) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(1) - (4) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list with an interest list request date described in subsection (f)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(i) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(1) - (4) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of:

(A) the date DADS receives the oral or written request;  
or

(B) because of extenuating circumstances as determined by DADS, the original request date described in subsection (f)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(j) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(6) of this section and DADS subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of the date DADS receives the oral or written request; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

~~{(e) If an applicant contacts a DADS regional office, the 2-1-1 Texas Program, or a DADS regional office receives information in accordance with subsection (b) of this section, the DADS regional office staff determines if CMPAS Program funding is available. If funding is available, DADS sends a referral to the provider. If no funding is available, DADS regional office staff registers the applicant's name on an interest list by entering information in the DADS Community Services Interest List (CSIL) system. DADS refers an applicant on the interest list for determination of program eligibility in accordance with §44.301 of this chapter (relating to Initiation of Services).}~~

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505888

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



## SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

### 40 TAC §44.301

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055 and §531.0931 and Texas Human Resources Code, §161.021.

§44.301. *Initiation of Services.*

(a) When CMPAS Program funding becomes available in a DADS region [to serve applicants on the CMPAS interest list], the DADS regional designee [or other designated DADS staff]:

~~{(1) releases funding for applicants on the interest list on a first-come, first-served basis;}~~

(1) ~~[(2)]~~ refers to the region's provider the applicant whose ~~[on the]~~ interest list request date, assigned in accordance with §44.202(e) of this chapter (relating to CMPAS Interest Lists), is earliest on the region's CMPAS interest list ~~[to the region's contracted provider in order to enroll in the CMPAS Program]; and~~

(2) ~~[(3)]~~ informs the provider of any other DADS program services the applicant is receiving, the cost of those services, and the approved service period for those services.

(b) If DADS refers an applicant to a region's provider, as described in subsection (a)(1) of this section, the provider must comply with the requirements in §44.203 of this chapter (relating to Assessment and Eligibility Determination).

(c) ~~[(b)]~~ The provider must provide CMPAS Program services to all applicants and individuals DADS refers to the provider unless the assessor of need determines and documents:

(1) an ~~[the]~~ applicant is not eligible for CMPAS;

(2) the provider and other sources of support are unable to meet an applicant's or ~~[the]~~ individual's needs without risking the individual's health and safety;

(3) the environment in an applicant's or ~~[the]~~ individual's home is a serious threat to the health and safety of an attendant; or

(4) an ~~[the]~~ individual, or someone in the individual's home, seriously threatens the health and safety of an ~~[the]~~ attendant.

(d) ~~[(e)]~~ The provider must conduct an IDT meeting in accordance with the requirements of §44.502 of this chapter (relating to Convening an Interdisciplinary Team) if it determines it cannot provide CMPAS Program services to an individual for any of the reasons described in subsection (c)(2) - (4) ~~[(b)(2) - (4)]~~ of this section.

(e) ~~[(d)]~~ The provider must begin providing services to an individual within seven days after the DADS regional designee enters the CMPAS authorization in DADS Service Authorization System, as described in §44.203 of this chapter ~~[determining the individual is eligible and funding is available]~~.

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505889

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



## CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Subchapter B, Interest Lists, consisting of §§48.1301 - 48.1303, and §48.2702 in Subchapter F, In Home and Family Support Program; amendments to §48.2701, in Subchapter F, In Home and Family Support Program, §§48.2907, 48.2910, and 48.2915 in Subchapter H, Eligibility; and the

repeal of Subchapter D, Pilot Project for Persons with AIDS, consisting of §§48.2301 - 48.2305; §48.2702 in Subchapter F, In-Home and Family Support Program; §48.2931 in Subchapter H, Eligibility; and Subchapter J, Community Based Alternatives (CBA) Program, consisting of §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084, 48.6085, 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108, 48.6109, 48.6110, 48.6112, and 48.6114, in Chapter 48, Community Care for Aged and Disabled.

### BACKGROUND AND PURPOSE

The purpose of the proposed rules, in part, is to describe how DADS maintains the interest lists in the DADS community care services and programs of adult foster care (AFC), day activity and health services (DAHS), emergency response services (ERS), family care (FC) services, the Home Delivered Meals (HDM) Program, the In-Home and Family Support Program (IH/FSP), the Residential Care (RC) Program, and the Special Services to Persons with Disabilities (SSPD) Program.

The amendments implement §531.0931, Government Code, as added by Senate Bill 169, 84th Legislature, 2015, and align the rules with other DADS rules addressing interest lists. The proposed rules require DADS to keep the name of a military family member who resides out of state on an interest list while a military member is on active duty or for up to one year after a former military member's active duty ends. The proposed rules describe the conditions under which an applicant's name may be reinstated on an interest list after being removed and how an interest list request date is assigned, including when DADS reinstates an applicant's name to the interest list with the original request date. The proposed rules also describe the notification the applicant receives from DADS regarding the reinstatement.

The proposed rules update terminology and describe how DADS contacts an applicant to offer IH/FSP services, conducts the eligibility determination process, and provides notice regarding IH/FSP eligibility. A DADS case manager may conduct an initial interview by telephone to determine eligibility and more quickly complete an applicant's enrollment in the IH/FSP.

The proposed rules change the eligibility criteria for DADS Title XIX and XX DAHS to make them consistent with the criteria used by managed care organizations contracting with HHSC to provide DAHS in the Medicaid STAR PLUS waiver program.

Rules governing a pilot program for persons with AIDS, respite care services, and the Community Based Alternatives (CBA) Program, two programs and a service that have been terminated, are proposed for repeal.

Additional changes were made to update terminology and remove obsolete rules.

### SECTION-BY-SECTION SUMMARY

The proposed new §48.1301 establishes the meanings of terms used in Subchapter B, regarding interest lists. The proposed new rule defines "AFC," "applicant," "case manager," "community care service or program," "DADS," "DAHS," "ERS," "FC," "former military member," "HDM Program," "IH/FSP," "military member," "military family member," "RC Program," "responsible party," and "SSPD Program."

The proposed new §48.1302 describes how each DADS region maintains an interest list for each "community care service or program" as defined in §48.1301. The proposed new rule describes how a person may submit a request to add an applicant's name on a regional interest list. The proposed new rule describes how an interest list request date is determined. The proposed new rule also describes the circumstances under which DADS removes an applicant's name from a community care interest list and may reinstate a name after it is removed. The proposed new rule describes how an interest list request date is assigned when a name is reinstated on the interest list, and the notification an applicant or responsible person receives regarding the reinstatement.

The proposed new §48.1303 describes the process DADS uses to enroll applicants in a community care service or program other than the IH/FSP, which is addressed in proposed new §48.2702. The process includes contacting the applicant whose interest list request date is earliest on a community care interest list for the DADS region in which the service or program is available. The proposed new rule states that DADS removes an applicant's name from a community care interest list if the applicant or responsible party declines the offer of services and that a case manager contacts the applicant to determine eligibility if the applicant or responsible party accepts the offer of services.

The proposed repeal of Subchapter D, consisting of §§48.2301 - 48.2305, deletes rules regarding the pilot project for persons with AIDS because the program has been terminated..

The proposed amendment to §48.2701 amends the definitions of "adult," "applicant," "household/family," and "responsible party" and adds definitions of "calendar day," "case manager," "disability," "Disabilities Screening Instrument," "former military member," "IH/FSP," "IH/FSP interest list," "individual," "legal guardian," and "service plan." These definitions clarify and provide the meaning of terms used in Subchapter F, regarding the IH/FSP. The proposed amendment deletes the definition of "informant" and "living independently" because these terms are not used in Subchapter F.

The proposed repeal of §48.2702 deletes rules regarding application for eligibility, placement on a waiting list, and notice of ineligibility or reduction of benefits for the IH/FSP. These rules are being replaced by proposed new §48.1302, regarding community care interest lists, and §48.2702, regarding the eligibility determination process.

The proposed new §48.2702 establishes that when the IH/FSP becomes available, DADS contacts the applicant whose interest list request date is the earliest on the IH/FSP interest list for the region in which the IH/FSP is available to offer the IH/FSP to the applicant. The proposed new rule states that if the applicant or responsible party declines the offer for the IH/FSP, DADS removes the applicant's name from the IH/FSP interest list. The proposed new rule states that if the applicant or responsible party accepts the offer for the IH/FSP, DADS contacts the applicant to conduct the initial interview or to schedule an appointment for the initial interview. The proposed new rule allows DADS to conduct the initial interview with an applicant or responsible party by telephone or face-to-face. The proposed new rule states that if DADS is unable to conduct the initial interview, DADS sends the applicant a DADS form with the date, time, and location for the appointment. The proposed new rule states that if the applicant, without prior notification, does not keep two appointments that were scheduled in writing, DADS sends written notice to the

applicant that eligibility is denied unless the applicant contacts the IH/FSP office with 12 calendar days after the date on the notice to schedule an appointment and keeps that appointment. The proposed new rule states that DADS notifies an applicant in writing of DADS determination regarding the applicant's eligibility for the IH/FSP.

The proposed amendment to §48.2907 replaces the term "CCAD services" with a list of services or programs for which DADS uses the DADS Needs Assessment Questionnaire and Task/Hour Guide form to determine an applicant's or individual's functional need and unmet need. The proposed amendment also clarifies that to be eligible for a listed service or program, an applicant or individual must have a functional need and an unmet need for the service or program.

The proposed amendment to §48.2910 deletes outdated information regarding waiting lists that is being replaced by proposed new rules in Chapter 48, Subchapter B regarding interest lists. The proposed amendment clarifies that some services and programs described in Chapter 48 are not available in all areas of Texas.

The proposed amendment to §48.2915 states that the eligibility criteria for DAHS include an applicant or client having an "unmet need" for DAHS, as determined by DADS. This replaces the requirement that a person "meet the minimum functional need criteria" because the use of a standardized assessment instrument will not apply to DAHS. The proposed amendment also clarifies that to be eligible for DAHS, an applicant or client, while receiving DAHS, must not receive a service that is identified as being mutually exclusive to DAHS in the Mutually Exclusive Services table located in an appendix of the Case Manager Community Care for Aged and Disabled Handbook available on DADS website. The proposed amendment replaces the requirement that a person have a "related functional disability requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse" with the requirement to have a chronic medical diagnosis and physician's orders for DAHS on the DADS Day Activity and Health Services (DAHS) Physician's Orders form. The proposed amendment replaces the list of personal care or restorative needs that can be stabilized, maintained, or improved by DAHS with the requirement to have one or more functional limitations and the potential for receiving therapeutic benefit from DAHS, as determined by DADS. The proposed amendment also makes minor editorial changes.

The proposed repeal of §48.2931 deletes the rule regarding respite care services because respite care services are no longer governed by Chapter 48. Respite services are offered through Medicaid §1915(c) waiver programs and, therefore, are addressed in the rules governing those programs.

The proposed repeal of Subchapter J deletes rules regarding the CBA Program. The program was terminated effective September 1, 2104. Conduct governed by Subchapter J that occurred before the effective date of its repeal is governed by the rules in effect on the date of the conduct and Subchapter J continues in effect for that purpose.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

## SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

## PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections, and repeals are in effect, the public will benefit from rules that more clearly address how an applicant's name is placed on an interest list for the services and programs of AFC, DAHS, ERS, FC, the HDM Program, the IH/FSP, the RC Program, and the SSPD Program, and how those lists are maintained. The public will also benefit from rules that improve and clarify the eligibility determination process for DAHS and the IH/FSP.

Ms. Jordan anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeals. The amendments, new sections, and repeals will not affect a local economy.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Heather Wolf at (512) 438-3501 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R03, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R03" in the subject line.

## SUBCHAPTER B. INTEREST LISTS

### 40 TAC §§48.1301 - 48.1303

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human

Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect implements Texas Government Code, §§531.0055, 531.021, and 531.0931; and Texas Human Resources Code, §161.021 and §32.021.

#### §48.1301. Definitions.

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

(1) AFC--Adult foster care. Services provided in a 24-hour living arrangement in an adult foster care home for persons who, because of physical, mental or emotional limitations, are unable to continue to function independently in their own homes.

(2) Applicant--A Texas resident interested in receiving a community care service or program.

(3) Case manager--A DADS employee who is responsible for case management activities.

(4) Community care service or program--Any of the following services and programs:

(A) AFC;

(B) DAHS;

(C) ERS;

(D) FC;

(E) the HDM Program;

(F) the IH/FSP;

(G) the RC Program; and

(H) the SSPD Program.

(5) Community care interest list--A list containing the names of applicants who are interested in receiving a community care service or program.

(6) DADS--The Department of Aging and Disability Services.

(7) DADS region--One of eleven regions of Texas that provide access to and support for DADS services.

(8) DAHS--Day activity and health services. Services described in Chapter 98, Subchapter H of this title (relating to Day Activity and Health Services (DAHS) Contractual Requirements) that are designed to meet the needs of an adult in a licensed adult day care facility.

(9) ERS--Emergency response services. Services described in Chapter 52 of this title (relating to Contracting to Provide Emergency Response Services) that provide electronic monitoring for functionally impaired adults who live alone or who are functionally isolated in the community.

(10) FC services--Family care services. In-home attendant services described in Chapter 47 of this title (relating to Contracting to Provide Primary Home Care Services) provided to adults.

(11) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(12) HDM Program--Home Delivered Meals Program. The program described in Chapter 55 of this title (relating to Contracting to Provide Home-Delivered Meals) in which a provider agency delivers meals to an individual.

(13) IH/FSP--In-Home and Family Support Program. The program described in Subchapter F of this chapter (relating to In-Home and Family Support Program) that provides direct grant benefits to an individual with physical disabilities who is four years of age or older and the individual's family to purchase disability-related services that help the individual remain living at home.

(14) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(15) Military family member--A person who is the spouse or child (regardless of age) of:

- (A) a military member; or
- (B) a former military member.

(16) RC Program--Residential Care Program. A program that provides the services described in §46.41 of this title (relating to Required Services) in a licensed assisted living facility.

(17) Responsible party--A person who is:

- (A) an applicant's parent or legal guardian; or
- (B) anyone an adult applicant designates as the applicant's representative with regard to a matter described in this subchapter.

(18) SSPD Program--Special Services to Persons with Disabilities Program. The program described in Chapter 58 of this title (relating to Contracting to Provide Special Services to Persons with Disabilities) designed to assist a person:

- (A) develop the skills needed to remain in the community, living as independently as possible; and
- (B) achieve habilitative or re-habilitative goals.

§48.1302. Community Care Interest Lists.

(a) DADS maintains, for each DADS region, a community care interest list for each community care service or program.

(b) A person may request in person, by telephone, or in writing that DADS add an applicant's name to a community care interest list. The person making the request must provide a Texas address for the applicant.

(c) DADS adds an applicant's name to a community care interest list if:

- (1) a request is made in accordance with subsection (b) of this section; or
- (2) an applicant's name is on the interest list for a DADS region and the applicant or a responsible party notifies DADS that the applicant has moved to another DADS region and requests that the applicant's name be added to the interest list for the DADS region to which the applicant has moved.
- (d) DADS adds an applicant's name to a community care interest list with an interest list request date as follows:

(1) for a request to add an applicant's name to the interest list made in accordance with subsection (b) of this section, the date of the request; or

(2) for a request to add an applicant's name to the interest list made in accordance with subsection (c)(2) of this section, the date of the original request made in accordance with subsection (b) of this section.

(e) DADS removes an applicant's name from a community care interest list if:

(1) the applicant or responsible party requests that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas:

- (A) while the military member is on active duty; or
- (B) for less than one year after the former military member's active duty ends;

(3) the applicant is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(4) the applicant or responsible party declines an offer of a community care service or program when contacted by DADS, as described in §48.1303 of this subchapter (relating to Enrollment) or §48.2702 of this chapter (relating to Eligibility Determination Process), unless the applicant is a military family member living outside of Texas:

- (A) while the military member is on active duty; or
- (B) for less than one year after the former military member's active duty ends;

(5) the applicant is deceased; or

(6) DADS denies an applicant's eligibility for the community care service or program and the applicant has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §48.2710 of this chapter (relating to Right to Appeal) or §48.3903 of this chapter (relating to Denial, Reduction, and Termination of Benefits) and did not appeal the decision, or appealed and did not prevail.

(f) If DADS removes an applicant's name from a community care interest list in accordance with subsection (e)(1) - (4) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list with an interest list request date described in subsection (d)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS removes an applicant's name from a community care interest list in accordance with subsection (e)(1) - (4) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of:

- (A) the date DADS receives the oral or written request;
- or

(B) because of extenuating circumstances as determined by DADS, the original request date described in subsection (d)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest in accordance with paragraph (1) of this subsection.

(h) If DADS removes an applicant's name from a community care interest list in accordance with subsection (e)(6) of this section and DADS subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of the date DADS receives the oral or written request; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

§48.1303. Enrollment.

(a) This section does not apply to the IH/FSP. Enrollment in the IH/FSP is governed by §48.2702 of this chapter (relating to Eligibility Determination Process).

(b) When a community care service or program becomes available in a DADS region, DADS contacts the applicant whose interest list request date, assigned in accordance with §48.1302(d) of this subchapter (relating to Community Care Interest Lists), is earliest on the community care interest list for the community care service or program that is available, and offers the community care service or program to the applicant.

(1) If the applicant or responsible party declines the offer of the community care service or program, DADS removes the applicant's name from the interest list for the community care service or program, as described in §48.1302(e)(4) of this subchapter.

(2) If the applicant or responsible party accepts the offer of the community care service or program, a case manager contacts the applicant to conduct an eligibility determination for the community care service or program.

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505890  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 438-3501



## SUBCHAPTER D. PILOT PROJECT FOR PERSONS WITH AIDS

### 40 TAC §§48.2301 - 48.2305

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeals implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§48.2301. *Client Eligibility Criteria.*

§48.2302. *Availability of Project Slots.*

§48.2303. *Right To Appeal.*

§48.2304. *Case Management Provider Standards for Participation.*

§48.2305. *Reimbursement.*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505894  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 438-3501



## SUBCHAPTER F. IN-HOME AND FAMILY SUPPORT PROGRAM

### 40 TAC §48.2701

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§48.2701 *Definitions.*

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

(1) Adult--A person who is [An individual age] 18 years of age or older.

(2) Applicant--A Texas resident interested in receiving benefits through the IH/FSP. [Applicant/consumer--An individual who is determined to have a disability or disabilities as specified in the Human Resources Code, Chapter 35, and who is either a member of a household or is living independently. Disability is defined as physical impairment which:]

~~[(A) is likely to continue indefinitely;]~~

~~[(B) results in substantial functional limitations in one or more of the following areas of major life activity;]~~

~~[(i) self-care;]~~

~~[(ii) receptive and expressive language;]~~

~~[(iii) learning;]~~

~~[(iv) mobility;]~~

~~[(v) self-direction;]~~

~~[(vi) capacity for independent living;]~~

~~[(vii) economic self-sufficiency; and]~~

~~[(C) reflects the person's need for care, treatment, services or support which are of lifelong or extended duration and are individually planned and coordinated.]~~

(3) Calendar day--Any day, including weekends and holidays.

(4) Case manager--A DADS employee who is responsible for case management activities for an individual, including eligibility determination, enrollment, assessment and reassessment of the individual's need, service plan development, and intercession on the individual's behalf.

(5) Disability--A physical impairment that:

(A) is likely to continue indefinitely;

(B) results in substantial functional limitations in one or more of the following areas of major life activity as defined on the Disabilities Screening Instrument:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction; or

(vi) capacity for independent living; and

(C) reflects the person's need for treatment or services that are lifelong or of extended duration.

(6) Disabilities Screening Instrument--A DADS form used to determine the disability and the type and severity of functional limitations experienced by an applicant or individual.

(7) [(3)] Household--Includes: [Household/family--Except as specified in subparagraph (E) of this definition, one or more ]

(A) the following people listed on an applicant's [the] Internal Revenue Service (IRS) income tax return [form]:

(i) the applicant;

(ii) [(A)] the spouse of the applicant if they file jointly[, in the case of spouses]; and

(iii) all dependents; or

(B) the following people listed on the applicant's parent's or legal guardian's IRS income tax return:

(i) the applicant;

(ii) the parent or legal guardian of the applicant; and

(iii) all dependents.

~~[(B) as individuals included as dependents on the IRS income tax return form. If the person with the disability is a new household member by court order, and therefore would not have been considered a household member on the previous year's IRS income tax return form, he is considered a member of the household/family;]~~

~~[(C) as an adult with a disability who is applying for services on his own behalf, who lives alone or with others, and who files an IRS income tax return under single status or files as married--filing separately;]~~

~~[(D) as an individual living with his natural, foster, adoptive, or surrogate parent(s) or legal guardian(s) appointed by the court; or]~~

~~[(E) as foster care homes with a current DHS contract to care for no more than four adults. Exception: DHS-certified foster care homes which care for four or more minors that are under the department's temporary or permanent managing conservatorship. The definition of a household excludes intermediate care facilities; skilled nursing facilities; personal care homes; ICF-MR/RC facilities; board and care homes, and room and board facilities.]~~

(8) IH/FSP--In-Home and Family Support Program.

(9) IH/FSP interest list--A community care interest list, maintained in accordance with §48.1302 of this chapter (relating to Community Care Interest Lists) for the IH/FSP.

(10) Individual--A person receiving benefits through the IH/FSP. Individual in this subchapter may also be referred to as a client or a consumer.

(11) Legal guardian--A person appointed by a court to make decisions and act on behalf of an individual.

~~[(4) Informant--An individual who is assisting an adult applicant/consumer in applying for IH/FSP services.]~~

~~[(5) Living independently--An adult with a developmental disability who lives alone or lives with others who file the IRS personal income tax return form under single status or married filing separately.]~~

(12) [(6)] Responsible party--A person [An individual] who is [either]:

(A) an applicant's or individual's [the consumer's] natural or surrogate parent or legal guardian [appointed by the court and who is applying on behalf of the consumer]; or

(B) anyone an adult applicant or individual designates as the applicant's or individual's representative with regard to a matter described in this subchapter [18 years or older who is applying for services on his own behalf. An applicant who is 18 years or older, who is unable to apply because of physical limitations, may designate a responsible party to assist him in the application process ; however, the adult applicant must sign the application form. If the applicant signs with an "X," he must have two witnesses].

(13) Service Plan--A plan, documented on a DADS form, that includes DADS-approved items or services that will meet an individual's care needs in a community-based setting.

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505892

Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 438-3501



#### 40 TAC §48.2702

##### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

##### *§48.2702. Application.*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505895  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 438-3501



#### 40 TAC §48.2702

##### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

##### *§48.2702. Eligibility Determination Process.*

(a) When an opening in the IH/FSP becomes available in a DADS region, DADS contacts the applicant whose interest list request date, assigned in accordance with §48.1302(d) of this chapter (relating to Community Care Interest Lists), is earliest on the region's IH/FSP interest list and offers the IH/FSP to the applicant.

(1) If the applicant or responsible party declines the offer of the IH/FSP, DADS removes the applicant's name from the region's IH/FSP interest list, as described in §48.1302(e)(4) of this chapter.

(2) If the applicant or responsible party accepts the offer of the IH/FSP, DADS contacts the applicant to conduct an initial interview or to schedule an appointment for the initial interview. DADS may conduct the initial interview with an applicant or responsible party either by telephone or face-to-face.

(b) If DADS is unable to conduct the initial interview, as described in subsection (a)(2) of this section, DADS sends the applicant the DADS In-Home and Family Support Program Appointment Notice form with the date, time, and location for the appointment.

(1) If the applicant, without prior notification, does not keep two appointments scheduled in writing, the case manager sends the applicant the DADS Notification of In-Home and Family Support Program Benefits form to provide written notice that the applicant's eligibility is denied unless the applicant contacts the IH/FSP office within 12 calendar days after the date of the form to schedule an appointment and keeps that appointment.

(2) The completed DADS Notification of In-Home and Family Support Program Benefits form includes:

(A) the reason for the denial;

(B) the effective date of the denial; and

(C) the applicant's right to appeal in accordance with §48.2710 of this subchapter (relating to Right to Appeal).

(c) If DADS determines an applicant is eligible for the IH/FSP, DADS notifies the applicant in writing using the DADS Notification of In-Home and Family Support Program Benefits form.

(d) If DADS denies an applicant's eligibility for the IH/FSP, DADS notifies the applicant in writing using the DADS Notification of In-Home and Family Support Program Benefits form. The completed form includes:

(1) the reason for the denial;

(2) the effective date of the denial; and

(3) the applicant's right to appeal in accordance with §48.2710 of this subchapter.

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505891  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 7, 2016  
For further information, please call: (512) 438-3501



#### SUBCHAPTER H. ELIGIBILITY

#### 40 TAC §§48.2907, 48.2910, 48.2915

##### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§48.2907. *Need.*

(a) DADS uses the DADS Needs Assessment Questionnaire and Task/Hour Guide form [The client needs assessment questionnaire is used] to determine an applicant's or individual's functional need and unmet need for: [CCAD services.]

- (1) community attendant services;
- (2) family care services;
- (3) Primary Home Care Program;
- (4) Home Delivered Meals Program;
- (5) adult foster care;
- (6) Residential Care Program;
- (7) emergency response services; and
- (8) Special Services to Persons with Disabilities Program.

(b) To be eligible for a service or program described in subsection (a) of this section, an applicant or individual must have a [Regardless of a client's] functional need and an unmet need for the program or service [eligibility as determined by his score on the client needs assessment questionnaire, he receives CCAD services only if he has an unmet need for those services].

§48.2910. *Service Availability.*

Some services and programs described in this chapter are not available in all [certain] geographic areas of Texas. [the state. If the provider agency in an eligible client's area is operating at capacity, the client may not be able to receive a service at the time he is determined eligible. In this event, the caseworker puts the client's name on a waiting list. Waiting lists are kept in order according to the score on the client needs assessment questionnaire and then chronologically by date of eligibility certification.]

§48.2915. *Day Activity and Health Services.*

To be eligible for day activity and health services (DAHS), an applicant or client [applicant/client] must:

- (1) be Medicaid eligible or meet the income and resource guidelines established [by the department] in §§48.2902, 48.2903, 48.2922, and 48.2923 of this chapter [title] (relating to Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources);
- (2) have an unmet need for DAHS as determined by DADS [meet the minimum functional need criteria as set by the department.

The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding. The department will seek stakeholder input before making any change in the minimum required score for functional eligibility. Clients receiving services on the effective date of this rule may continue to receive services until the department assesses the client's level of functional need];

(3) while receiving DAHS, not receive a service that is identified as being mutually exclusive to DAHS in the Mutually Exclusive Services table in Appendix XX of the Case Manager Community Care for Aged and Disabled Handbook available at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(4) [(3)] have a chronic medical diagnosis[; a related functional disability;] and physician's orders for DAHS on the DADS Day Activity and Health Services (DAHS) Physician's Orders form [requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse]; and

(5) [(4)] have one or more functional limitations and the potential for receiving therapeutic benefit from DAHS as determined by DADS review of the Day Activity and Health Services (DAHS) Health Assessment/Individual Service Plan form completed in accordance with §98.203 of this title (relating to Written Referrals for Services) or §98.204 of this title (relating to DAHS Facility-Initiated Referrals). [of the following personal care or restorative needs that can be stabilized, maintained, or improved by participation in DAHS:]

[(A) Bathing, dressing, and grooming. The applicant/client may need help with bathing, dressing, and routine hair and skin care.]

[(B) Transfer and ambulation. The applicant/client may need help with transferring from chair or commode or walking about.]

[(C) Toileting. The applicant/client may need help with using a bedpan, urinal, or commode; emptying a catheter or ostomy bag; or managing incontinence of bowel or bladder. The applicant/client may require perineal care or bowel or bladder training.]

[(D) Feeding. The applicant/client may need feeding (for example, gastric, NG tube, feeding pump) or help with eating.]

[(E) Fluid intake. The applicant/client may need assistance in maintaining adequate fluid intake.]

[(F) Nutrition. The applicant/client may need therapeutic diet or texture modification for treatment or control of an existing condition.]

[(G) Medication. The applicant/client may require supervision or administration of ordered medications or injectables.]

[(H) Treatments. The applicant/client may require treatments that include:]

[(i) routine or frequent care for indwelling catheter;]

[(ii) measurement of weight related to monitoring a specific condition;]

[(iii) assistance or supervision of ostomy care based on individual needs;]

[(iv) taking and recording of vital signs to monitor an existing condition or medications being administered;]

*[(iv) periodic testing of blood or urine for sugar/acetone content or both;]*

*[(vi) assistance with skin care including application of lotions, observations, assessment, or treatment of skin conditions based on physician's orders for prevention and healing decubiti and chronic skin conditions; and]*

*[(vii) application of sterile dressings and elastic stockings and bandages;]*

*[(I) Restorative nursing procedures. The applicant/client requires assistance with range-of-motion exercises (active or passive) or proper positioning;]*

*[(J) Behavioral problems. The applicant/client may have behavioral problems that can be managed by facility staff;]*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505893

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



#### 40 TAC §48.2931

##### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

*§48.2931. Respite Care.*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505896

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



#### SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

**40 TAC §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084 - 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108 - 48.6110, 48.6112, 48.6114**

##### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

*§48.6001. Introduction.*

*§48.6002. Community Based Alternatives (CBA) Definitions.*

*§48.6003. Eligibility Criteria.*

*§48.6005. Level-of-Care/Medical Necessity Determinations.*

*§48.6006. Individual Service Plan.*

*§48.6007. Financial Eligibility Criteria.*

*§48.6008. Spousal Impoverishment Provisions.*

*§48.6009. Calculation of Client Copayment.*

*§48.6010. Individual's Right To Appeal.*

*§48.6011. Provider Claims Payment.*

*§48.6015. Calculation of Room and Board Amounts.*

*§48.6020. Pre-Enrollment Home Health Assessment.*

*§48.6021. Delay of Pre-Enrollment Home Health Assessment.*

*§48.6022. Community Based Alternatives Annual Reassessment.*

*§48.6023. Routine Service Plan Changes.*

*§48.6024. Changes to Personal Assistance Services.*

*§48.6026. Home and Community Support Services Agency (HCSSA) Qualifications.*

*§48.6028. Provisional Contracts--Home and Community Support Services Agencies.*

*§48.6030. Current Contractors--Home and Community Support Services Agencies.*

- §48.6031. *Emergency Response Services Program.*
- §48.6032. *Adult Foster Care General Contracting Requirements.*
- §48.6040. *Registered Nurse (RN) Delegation of Nursing Tasks.*
- §48.6050. *Service Array for Home and Community Support Services (HCSS).*
- §48.6052. *Cost-Effective Purchases of Adaptive Aids.*
- §48.6054. *Time Frames for Adaptive Aids Costing Less Than \$500.*
- §48.6056. *Time Frames for Adaptive Aids Costing \$500 or More.*
- §48.6058. *Cost-Effective Purchases of Medical Supplies.*
- §48.6060. *Time Frames for Medical Supplies.*
- §48.6062. *Time Frames for Emergency Purchases of Medical Supplies.*
- §48.6066. *Freight Charges for Medical Supplies and Adaptive Aids.*
- §48.6068. *Cost-Effective Purchases of Minor Home Modifications.*
- §48.6070. *Time Frames for Minor Home Modifications Costing \$1,000 or More.*
- §48.6072. *Time Frames for Minor Home Modifications Costing Less Than \$1,000.*
- §48.6074. *Landlord Approval for Minor Home Modifications.*
- §48.6076. *Accountability for Minor Home Modifications.*
- §48.6078. *Billable Units.*
- §48.6080. *Non-Billable Time and Activities.*
- §48.6082. *Mutually Exclusive Services.*
- §48.6084. *Service Limits and Claim Limits.*
- §48.6085. *Exception to Service Limit.*
- §48.6086. *Claims and Service Delivery Records.*
- §48.6088. *Required Documentation for Service Delivery.*
- §48.6090. *Fiscal Monitoring and Recoupment.*
- §48.6092. *Initiation of Community Based Alternatives (CBA) Home and Community Support Services Agency.*
- §48.6094. *Delay of Community Based Alternatives (CBA) Home and Community Support Services (HCSS) Initiation.*
- §48.6096. *Service Breaks.*
- §48.6098. *Circumstances Requiring Termination of CBA Services with Advance Notice.*
- §48.6100. *Circumstances Requiring Termination of Services and Medicaid Eligibility Without Advance Notice.*
- §48.6102. *Circumstances Which May Result in Termination of Services and Require Advance Notice.*
- §48.6104. *Crisis Intervention Requiring Immediate Suspension or Reduction of Services Without Advance Notice.*
- §48.6106. *Immediate Suspension with Advance Notice.*
- §48.6108. *Sanctions.*
- §48.6109. *Denial of a CBA Program Service.*
- §48.6110. *Reduction of a CBA Program Service.*
- §48.6112. *Personal Assistance Services, Adaptive Aids, Medical Supplies, or Nursing Provided Outside the HCSSA Contracted Service Delivery Area.*
- §48.6114. *HCSSA Transfer to a Different Contracted Service Delivery Area.*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505897

Lawrence Hornsby  
 General Counsel  
 Department of Aging and Disability Services  
 Earliest possible date of adoption: February 7, 2016  
 For further information, please call: (512) 438-3501



## CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §90.3 and new §90.44, in Chapter 90, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions.

### BACKGROUND AND PURPOSE

The purpose of the amendment and new section is to implement House Bill 2789 of the 84th Legislature, Regular Session, 2015, which added new §161.088 to the Human Resources Code. The proposal requires an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) to ensure that an employee who is hired on or after May 1, 2016, completes trauma-informed care training before working directly with a resident. The proposal provides that an employee works directly with a resident if the employee serves on a resident's interdisciplinary team or otherwise works with a resident to implement the resident's individual program plan. The proposal also updates the definition for "facility" and adds a definition for "individual program plan."

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §90.3 updates the definition of "facility" to clarify that in Chapter 90, Subchapters C, D and F, the term includes a program provider that must comply with those subchapters in accordance with 40 TAC §9.212. The proposed amendment also adds a definition for "individual program plan," a term used in proposed new §90.44.

The proposed new §90.44 requires an ICF/IID to ensure that an employee who is hired on or after May 1, 2016, completes trauma-informed care training before working directly with a resident. The proposal provides that an employee works directly with a resident if the employee serves on a resident's interdisciplinary team or otherwise works with a resident to implement the resident's individual program plan.

### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed amendment and new section are in effect, there are no foreseeable implications relating to costs or revenues of state and local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and new section may have an adverse economic effect on small businesses and micro-businesses, as providers may incur costs because new employees who work directly with the residents must take the training before working with the residents. DADS is unable to estimate the costs associated with these activities, but it

is expected to be minimal because the training will be provided by DADS and will be computer-based.

DADS estimates that the number of small businesses and micro-businesses subject to the proposed amendment and new section is less than 102. This estimate is based on DADS records, which indicate that 102 entities that have licenses to operate an ICF/IID are formed for the purpose of making a profit, one of the requirements for being a small or micro-business. DADS does not have data regarding the number of employees and gross receipts to determine what percentage of these entities meet the definition of a small business or micro-business. DADS is unable to estimate the projected economic impact on small businesses and micro-businesses.

No alternatives were considered because the training is required by statute.

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment and new section are in effect, the public benefit expected as a result of enforcing the amendment and new section is that specialized training will protect the health and safety of ICF/IID residents.

Ms. Henderson anticipates that there will be an economic cost to persons who are required to comply with the amendment and new section. DADS is unable to estimate the economic cost to persons who are required to comply with the amendment and new section, but it is expected to be minimal because the training will be provided by DADS and will be computer-based.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Crystal Beard at (512) 438-2264 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R08, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R08" in the subject line.

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §90.3

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, includ-

ing DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

##### §90.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions that are specific to the subchapter.

- (1) Addition--The addition of floor space to a facility.
- (2) Administrator--The administrator of a facility.
- (3) Administration of medication--Removing a unit or dose of medication from a previously dispensed, properly labeled container; verifying the medication with the medication order; giving the proper medication in the proper dosage to the proper resident at the proper time by the proper administration route; and recording the time of administration and dosage administered.
- (4) Advanced practice nurse--A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301, and authorized by the Texas Board of Nursing to practice as an advanced practice nurse.
- (5) Applicant--A person applying for a license under Texas Health and Safety Code, Chapter 252.
- (6) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.
- (7) Attendant personnel--All persons who are responsible for direct and non-nursing services to residents of a facility. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, housekeeping, laundry, and maintenance.
- (8) Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:
  - (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;
  - (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
  - (C) is not addressed in a behavior therapy program; and
  - (D) does not occur during a medical or dental procedure.
- (9) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.

(10) Centers for Medicare and Medicaid Services (CMS)--The federal agency that provides funding and oversight for the Medicare and Medicaid programs. CMS was formerly known as the Health Care Financing Administration (HCFA).

(11) Change of ownership--A change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility, or a change in the federal taxpayer identification number.

(12) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Health and Safety Code, Chapter 481, as amended, or the Federal Controlled Substance Act of 1970, Public Law 91-513, as amended.

(13) Controlling person of an applicant, license holder, or facility--A person who, acting alone or with others, has the ability to directly or indirectly influence or direct the management, expenditure of money, or policies of an applicant or license holder or of a facility owned by an applicant or license holder.

(A) The term includes:

(i) a person who owns at least 5 percent interest in the applicant or license holder;

(ii) a spouse of the applicant or license holder;

(iii) an officer or director, if the applicant or license holder is a corporation;

(iv) a partner, if the applicant or license holder is a partnership;

(v) a trustee or trust manager, if the applicant or license holder is a trust;

(vi) a person that operates or contracts with others to operate the facility;

(vii) a person who, because of a personal, familial, or other relationship is in a position of actual control or authority over the facility, without regard to whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility; and

(viii) a person who would be a controlling person of an entity described in clauses (i) - (vii) of this subparagraph, if that entity were the applicant or license holder.

(B) The term does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(14) DADS--The Department of Aging and Disability Services.

(15) Dangerous drug--Any drug as defined in the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483.

(16) Department--The Department of Aging and Disability Services.

(17) Designee--A state agency or entity with which DADS contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(18) Drug (also referred to as medication)--A drug is:

(A) any substance recognized as a drug in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the human body; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(19) Establishment--A place of business or a place where business is conducted which includes staff, fixtures, and property.

(20) Facility--A facility serving persons with an intellectual disability or related conditions licensed under this chapter as described in §90.2 of this chapter (relating to Scope) and required to be licensed under the Health and Safety Code, Chapter 252, or the entity that operates such a facility; or, in Subchapters C, D, and F of this chapter, a program provider that must comply with those subchapters in accordance with §9.212 of this title (relating to Non-licensed Providers Meeting Licensure Standards).

(21) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(22) Health care professional--A person licensed, certified, or otherwise authorized to administer health care, for profit or otherwise. The term includes a physician, licensed nurse, physician assistant, podiatrist, dentist, physical therapist, speech therapist, and occupational therapist.

(23) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(24) Immediate and serious threat--A situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if residents are not protected effectively from the harm or if the threat is not removed.

(25) Immediate jeopardy to health and safety--A situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

(26) Incident--An unusual or abnormal event or occurrence in, at, or affecting the facility or the residents of the facility.

(27) Inspection--Any on-site visit to or survey of a facility by DADS for the purpose of inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(28) IPP--Individual program plan. A plan developed by the interdisciplinary team of a facility resident that identifies the resident's training, treatment, and habilitation needs, and describes programs and services to meet those needs.

(29) [(28)] Large facility--Facilities with 17 or more resident beds.

(30) [(29)] Legal guardian--A person who is appointed guardian under §693 of the Probate Code.

(31) [(30)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(32) [(31)] License--Approval from DADS to establish or operate a facility.

(33) [(32)] License holder--A person who holds a license to operate a facility.

(34) [(33)] Licensed nurse--A licensed vocational nurse, registered nurse, or advanced practice nurse.

(35) [(34)] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(36) [(35)] Life safety features--Fire safety components required by the Life Safety Code such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(37) [(36)] Local authorities--A local health authority, fire marshal, building inspector, etc., who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(38) [(37)] Local health authority--The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as described in the Texas Health and Safety Code, §§121.021 - 121.025.

(39) [(38)] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(40) [(39)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

(41) [(40)] Metered dose inhaler--A device that delivers a measured amount of medication as a mist that can be inhaled.

(42) [(41)] Oral medication--Medication administered by way or through the mouth and does not include sublingual or buccal.

(43) [(42)] Person--An individual, firm, partnership, corporation, association, or joint stock company, and any legal successor of those entities.

(44) [(43)] Personal hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(45) [(44)] Qualified mental retardation professional (QMRP)--A person with at least a bachelor's degree who has at least one year of experience working with persons with an intellectual disability or related conditions.

(46) [(45)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian, employed by DADS, who is trained and experienced in long-term care regulations, standards of practice in

long-term care, and evaluation of resident care and functions independently of DADS Regulatory Services Division.

(47) [(46)] Registered nurse--A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(48) [(47)] Remodeling--The construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e., sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

(49) [(48)] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(50) [(49)] Restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that restricts freedom of movement or normal access to the resident's body. This term includes a personal hold.

(51) [(50)] Seclusion--The involuntary separation of a resident away from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(52) [(51)] Small facilities--Facilities with 16 or fewer resident beds.

(53) [(52)] Specialized staff--Personnel with expertise in developmental disabilities.

(54) [(53)] Standards--The minimum conditions, requirements, and criteria with which a facility will have to comply to be licensed under this chapter.

(55) [(54)] Topical medication--Medication applied to the skin but does not include medication administered in the eyes.

(56) [(55)] Universal precautions--The use of barrier precautions by facility personnel to prevent direct contact with blood or other body fluids that are visibly contaminated with blood.

(57) [(56)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(58) [(57)] Well-recognized church or religious denomination--An organization which has been granted a tax-exempt status as a religious association from the state or federal government.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505836

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-2264



## SUBCHAPTER C. STANDARDS FOR LICENSURE

### 40 TAC §90.44

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

#### §90.44. Trauma-Informed Care Training.

A facility must ensure that an employee who is hired by a facility on or after May 1, 2016, and whose duties will require the employee to work directly with a resident completes trauma-informed care training provided by DADS before the employee works directly with a resident. For purposes of this section, "to work directly with a resident" means to serve on a resident's interdisciplinary team or otherwise work with a resident to implement the resident's individual program plan.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505837

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-2264



## SUBCHAPTER H. ENFORCEMENT

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §90.239 and new §90.239 in Chapter 90, Intermediate Care Facilities for Persons with an Intellectual Disability or Related Conditions.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to set forth the notification requirements an intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) license holder must comply with to voluntarily close a facility.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §90.239 removes the current rule related to notice requirements for a facility closure.

The proposed new §90.239 sets forth the notice requirements with which an ICF/IID license holder must comply if voluntarily or involuntarily closing a facility.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section and repeal are in effect, enforcing or administering the new section and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section and repeal will not have an adverse economic effect on small businesses or micro-businesses because compliance with the new rules does not require a license holder to incur a cost.

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new section and repeal are in effect, the public benefit expected as a result of enforcing the new section and repeal is that the notification requirements that an ICF/IID license holder must provide when closing a facility.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the new section and repeal. The new section and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Crystal Beard at (512) 438-2264 in DADS Regulatory Services. Written comments on the proposal may be mailed to Texas Register Liaison, Legal Services-15R06, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R06" in the subject line.

### 40 TAC §90.239

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license an ICF/IID; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 252.

*§90.239. Notification of Closure.*

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505901

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501



**40 TAC §90.239**

**STATUTORY AUTHORITY**

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license an ICF/IID; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 252.

*§90.239. Notification of Closure.*

(a) In this section, the terms "close" and "closure" refer to a facility ceasing to operate. The terms do not include temporarily relocating residents of a facility.

(b) Except as provided in subsection (c) of this section, if a license holder intends to voluntarily close a facility, the license holder must, at least 60 days before the facility closes:

(1) send written notice of the license holder's intent to close the facility, including the anticipated date of closure, to:

(A) DADS; and

(B) a resident; and

(2) make reasonable efforts to send written notice of the license holder's intent to close the facility, including the anticipated date of closure to:

(A) a resident's legally authorized representative; or

(B) if the resident does not have a legally authorized representative, the resident's nearest relative.

(c) If, for reasons beyond the license holder's control, the license holder cannot provide the notice required by subsection (b) of this section at least 60 days before the license holder anticipates closing the facility, the license holder must state in the notice the reason why a shorter time period is necessary.

(d) If DADS requires a facility to close or the facility's closure is in any other way involuntary, the license holder must, immediately after becoming aware that the facility is closing:

(1) send written notice of the closure, including the anticipated date of closure, to:

(A) DADS, if DADS is not requiring the facility to close; and

(B) a resident; and

(2) make reasonable efforts to send written notice of the closure, including the anticipated date of closure to:

(A) a resident's legally authorized representative; or

(B) if the resident does not have a legally authorized representative, the resident's nearest relative.

(e) A license holder must submit the license of a closing facility to DADS with the notice required by subsection (b)(1)(A) or (d)(1)(A) of this section. If notice is not provided in accordance with subsection (b)(1)(A) or (d)(1)(A) of this section because DADS is requiring a facility to close, the license holder must submit the license to DADS when the closure is final.

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

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505902

Lawrence Hornsby

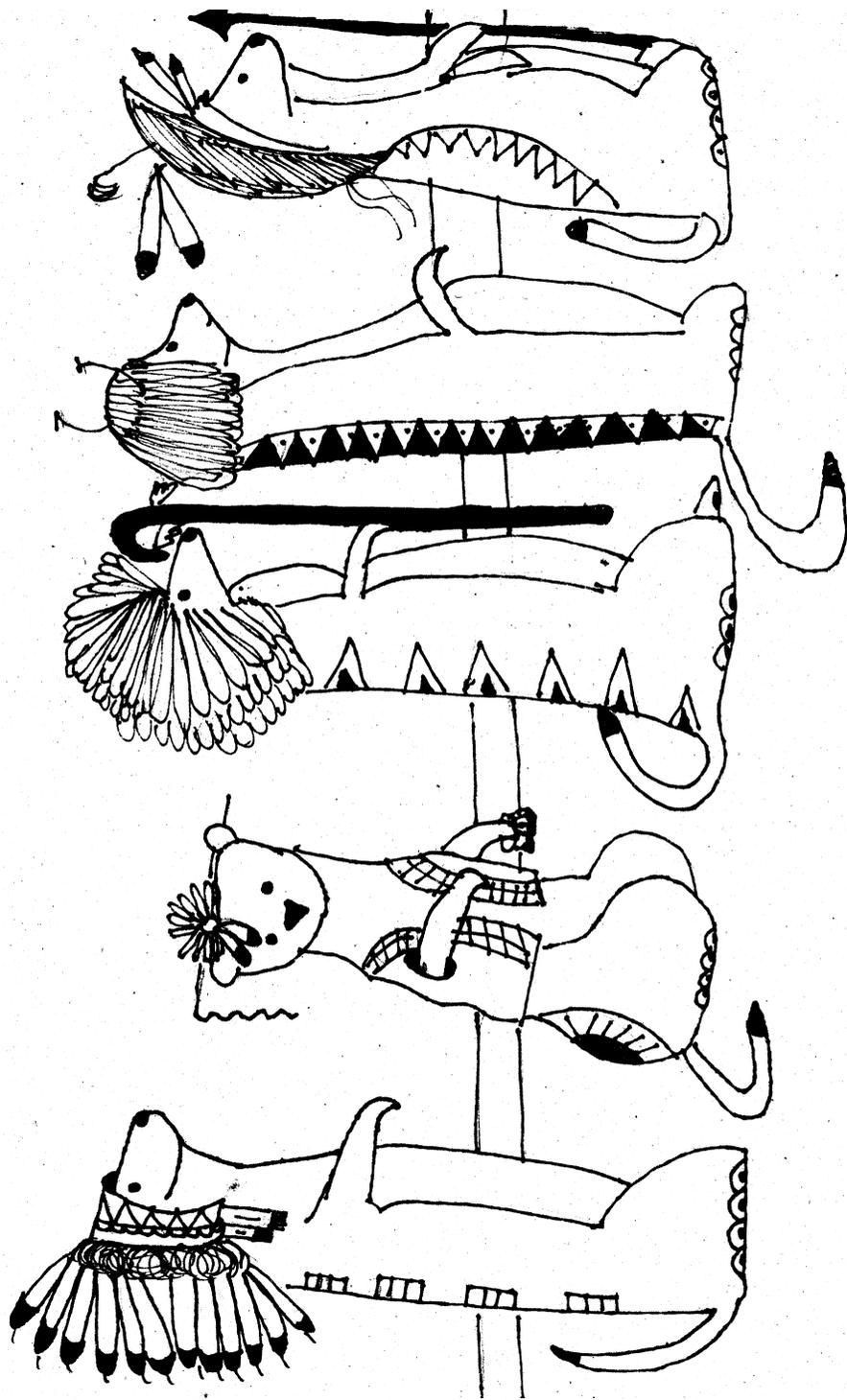
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 7, 2016

For further information, please call: (512) 438-3501





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 90. HUMAN TRAFFICKING PREVENTION BUSINESS PARTNERSHIP

##### 1 TAC §§90.1 - 90.5

The Office of the Secretary of State withdraws the emergency adoption of the new §§90.1 - 90.5 which appeared in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7743).

Filed with the Office of the Secretary of State on December 22, 2015.

TRD-201505898

Lindsey Wolf

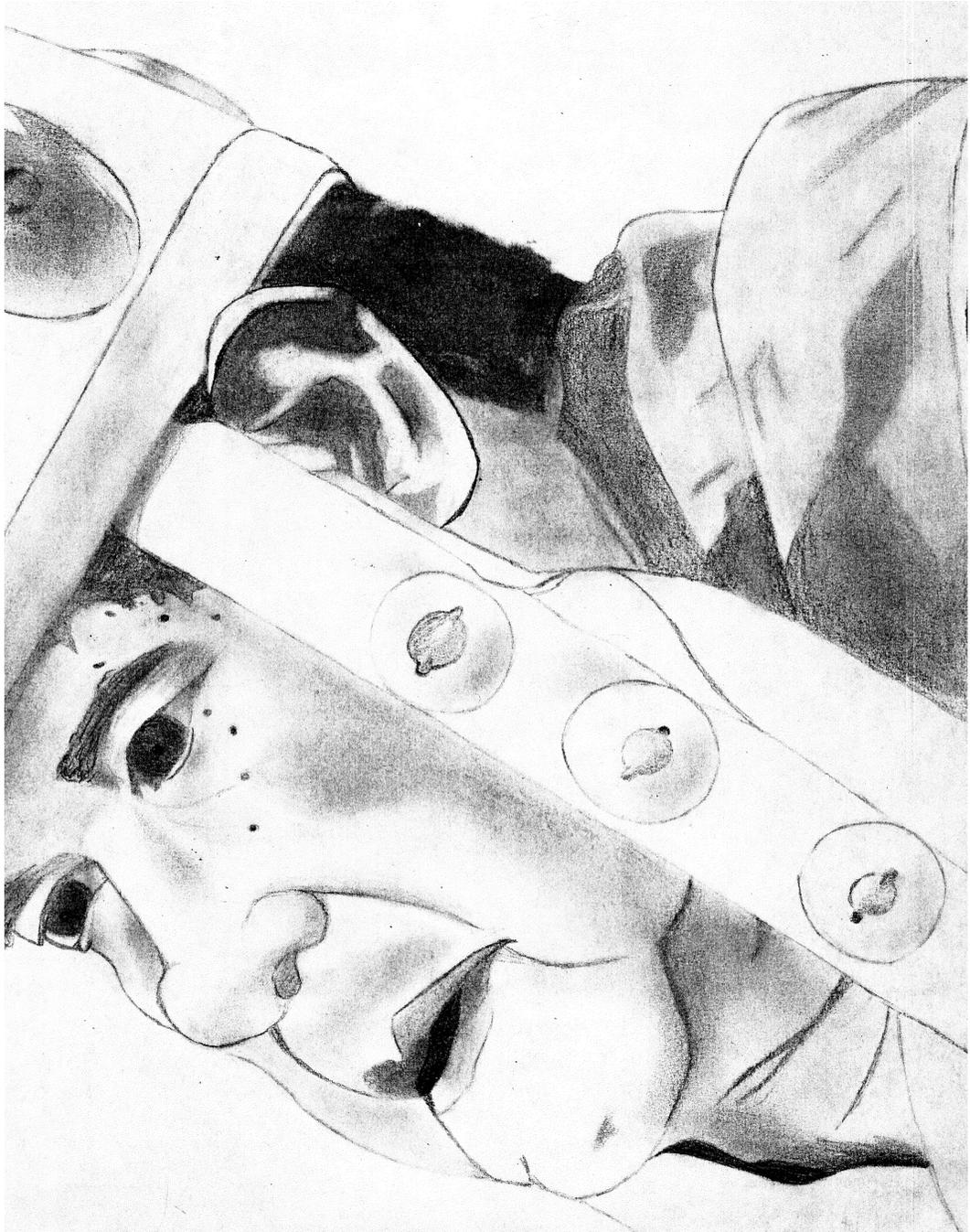
General Counsel

Office of the Secretary of State

Effective date: January 3, 2016

For further information, please call: (512) 463-5590





# 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

Effective date: January 7, 2016

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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505881

Ann McGeehan  
General Counsel  
Texas County and District Retirement System  
Effective date: January 10, 2016  
Proposal publication date: October 30, 2015  
For further information, please call: (512) 637-3247



## 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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505860  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505861  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505862

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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



## 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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505863

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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



## 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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505864

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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



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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505865

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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



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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505866

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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



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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505867

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505868

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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

## 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

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505870

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505871

D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
For further information, please call: (512) 424-5848

◆ ◆ ◆  
**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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505872  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
For further information, please call: (512) 424-5848

◆ ◆ ◆  
**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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505873  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
For further information, please call: (512) 424-5848

◆ ◆ ◆  
**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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505874  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505875  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
For further information, please call: (512) 424-5848

◆ ◆ ◆

## 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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505876  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 10, 2016  
Proposal publication date: September 18, 2015  
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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505877

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505878

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505879

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 10, 2016

Proposal publication date: September 18, 2015

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.

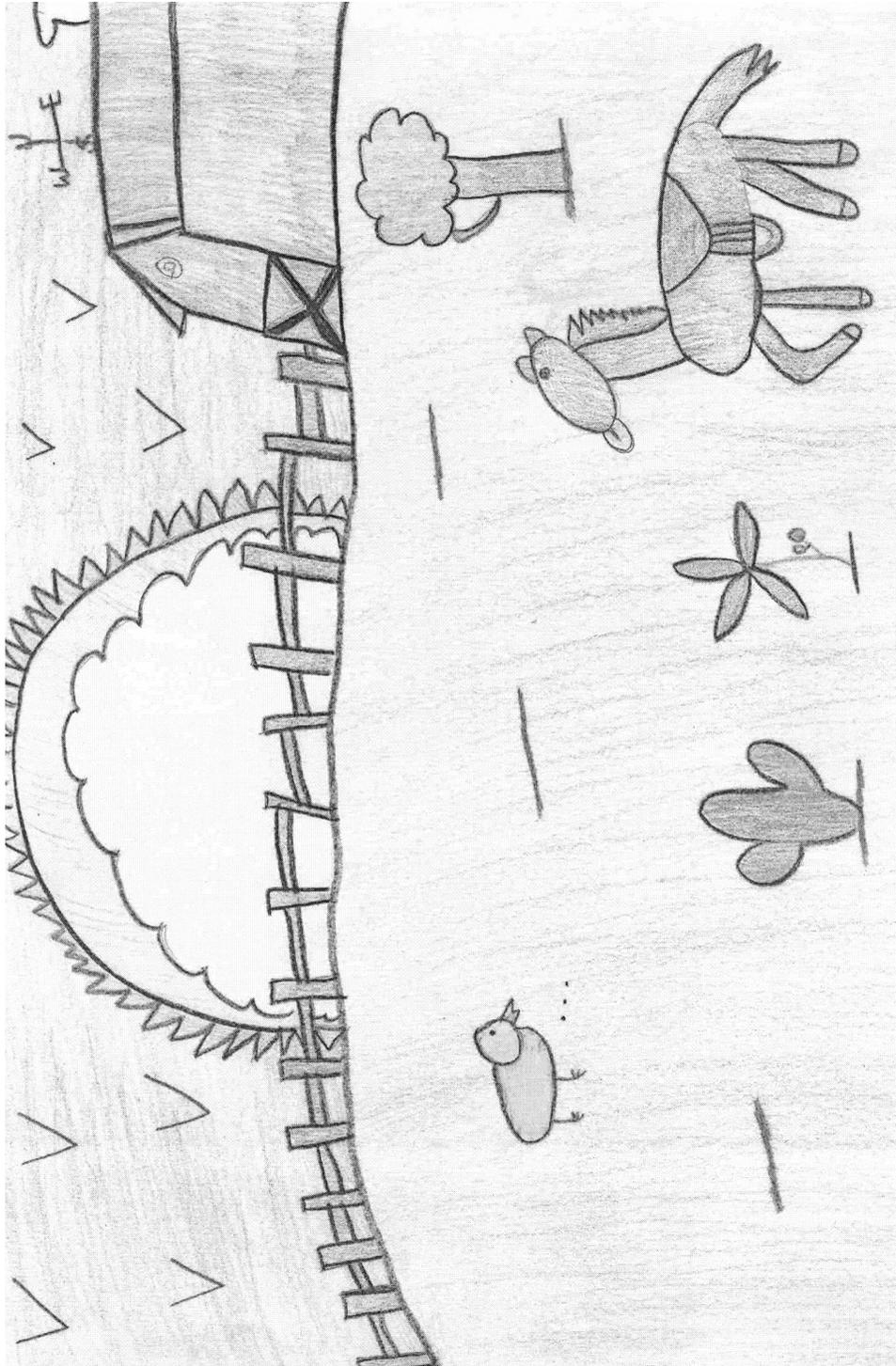
No other statute, article, or code is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2015.

TRD-201505848  
Sylvia F. Hardman  
General Counsel  
Department of Assistive and Rehabilitative Services  
Effective date: January 10, 2016  
Proposal publication date: September 25, 2015  
For further information, please call: (512) 424-4050





# TABLES &

---

# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

---

**Public Burden Statement**

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to be approximately 25 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRR, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.



U.S. Department of Transportation  
Federal Motor Carrier  
Safety Administration

**Medical Examination Report Form**  
(for Commercial Driver Medical Certification)

**PRIVACY ACT STATEMENT:** This statement is provided pursuant to the Privacy Act of 1974, 5 USC § 552a.

**AUTHORITY:** Title 49, United States Code (USC), 49 USC 31133(a)(8) and 31149(c)(1)(E).

**PURPOSE:** To record results of a driver's physical examination, to determine qualification to operate a commercial motor vehicle (CMV), and to promote driver health in interstate commerce according to the requirements in 49 CFR 391.41-49. Providing this information is mandatory. If this information is not provided, the medical examiner will not be able to determine qualification to operate a CMV in interstate commerce according to the requirements in 49 CFR 391.41-49. To record results of a driver's physical examination and to determine qualification to operate a CMV in intrastate commerce when the driver is required by a State to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners in accordance with the provisions of 49 CFR 391.41-49 and any variances from the physical qualification standards adopted by such State.

Medical examiners are required to complete the Medical Examination Report Form for every driver physical examination performed in accordance with 49 CFR 391.41. Each original (paper or electronic) completed Medical Examination Report Form must be retained on file at the office of the medical examiner for at least 3 years from the date of examination. The medical examiner must make all records and information in these files available to an authorized representative of FMCSA or an authorized Federal, State, or local enforcement agency representative, within 48 hours after the request is made [49 CFR 391.43(i)].

**ROUTINE USES:** The information is used for the purpose set forth above and may be forwarded to Federal, State, or local law enforcement agencies for their use. Medical Examination Report Forms collected by FMCSA will be stored in FMCSA's automated National Registry of Certified Medical Examiners System and will be used to monitor the performance of medical examiners listed on the National Registry.

In addition to those disclosures permitted under 5 USC 552a(b) of the Privacy Act of 1974, additional disclosures may be made in accordance with the U.S. Department of Transportation (DOT) Prefatory Statement of General Routine Uses published in the Federal Register on December 29, 2010 (75 FR 82132), under "Prefatory Statement of General Routine Uses" (available at <http://www.dot.gov/privacy/privacyact/notice>).

**ACKNOWLEDGMENT:** I understand the provisions of the Privacy Act of 1974 as related to me through the above-mentioned statement.

Driver's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MEDICAL RECORD #**  
  
(or sticker)

**SECTION 1. Driver Information** (to be filled out by the driver)

**PERSONAL INFORMATION**

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Driver's License Number: \_\_\_\_\_ Issuing State/Province: \_\_\_\_\_ Phone: \_\_\_\_\_ Gender:  M  F

E-mail (optional): \_\_\_\_\_  CLP Applicant\*  CLP Holder\*  CDL Applicant\*  CDL Holder\*

Driver ID Verified By\*\*: \_\_\_\_\_

Has your USDOT/FMCSA medical certificate ever been denied or issued for less than 2 years?  Yes  No  Not Sure

\*CLP/CDL Applicant/Holder: See instructions for definitions.

\*\*Driver ID Verified By: Record what type of photo ID was used to verify the identity of the driver, e.g., CDL, driver's license, passport.

**DRIVER HEALTH HISTORY**

Have you ever had surgery? If "yes," please list and explain below.  Yes  No  Not Sure

Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements)? If "yes," please describe below.  Yes  No  Not Sure

(Attach additional sheets if necessary)

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**DRIVER HEALTH HISTORY (continued)**

Do you have or have your ever had:	Not				Not		
	Yes	No	Sure		Yes	No	Sure
1. Head/brain injuries or illnesses (e.g., concussion)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	16. Dizziness, headaches, numbness, tingling, or memory loss	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Seizures, epilepsy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	17. Unexplained weight loss	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Eye problems (except glasses or contacts)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	18. Stroke, mini-stroke (TIA), paralysis, or weakness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Ear and/or hearing problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	19. Missing or limited use of arm, hand, finger, leg, foot, toe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Heart disease, heart attack, bypass, or other heart problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	20. Neck or back problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Pacemaker, stents, implantable devices, or other heart procedures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	21. Bone, muscle, joint, or nerve problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. High blood pressure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	22. Blood clots or bleeding problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. High cholesterol	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	23. Cancer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. Chronic (long-term) cough, shortness of breath, or other breathing problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	24. Chronic (long-term) infection or other chronic diseases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. Lung disease (e.g., asthma)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. Kidney problems, kidney stones, or pain/problems with urination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	26. Have you ever had a sleep test (e.g., sleep apnea)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. Stomach, liver, or digestive problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	27. Have you ever spent a night in the hospital?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. Diabetes or blood sugar problems Insulin used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	28. Have you ever had a broken bone?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. Anxiety, depression, nervousness, other mental health problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	29. Have you ever used or do you now use tobacco?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. Fainting or passing out	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	30. Do you currently drink alcohol?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
				31. Have you used an illegal substance within the past two years?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
				32. Have you ever failed a drug test or been dependent on an illegal substance?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other health condition(s) not described above:  Yes  No  Not Sure

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below.  Yes  No  Not Sure

*(Attach additional sheets if necessary)*

**CMV DRIVER'S SIGNATURE**

I certify that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.

Driver's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SECTION 2. Examination Report (to be filled out by the medical examiner)**

**DRIVER HEALTH HISTORY REVIEW**

Review and discuss pertinent driver answers and any available medical records. Comment on the driver's responses to the "health history" questions that may affect the driver's safe operation of a commercial motor vehicle (CMV).

*(Attach additional sheets if necessary)*

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**TESTING**

Pulse rate: \_\_\_\_\_ Pulse rhythm regular:  Yes  No Height: \_\_\_ feet \_\_\_ inches Weight: \_\_\_ pounds

Blood Pressure	Systolic	Diastolic	Urinalysis	Sp. Gr.	Protein	Blood	Sugar
Sitting			Urinalysis is required.				
Second reading (optional)			Numerical readings must be recorded.				
Other testing if indicated			Protein, blood, or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.				
<input type="text"/> <input type="text"/> <input type="text"/>							

**Vision**  
Standard is at least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° field of vision in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

**Hearing**  
Standard: Must first perceive whispered voice at not less than 5 feet OR average hearing loss of less than or equal to 40 dB, in better ear (with or without hearing aid).

Acuity	Uncorrected	Corrected	Horizontal Field of Vision	Check if hearing aid used for test: <input type="radio"/> Right Ear <input type="radio"/> Left Ear <input type="radio"/> Neither			
Right Eye:	20/___	20/___	Right Eye: ___ degrees	<b>Whisper Test Results</b>			
Left Eye:	20/___	20/___	Left Eye: ___ degrees	Record distance (in feet) from driver at which a forced whispered voice can first be heard		Right Ear	Left Ear
Both Eyes:	20/___	20/___					
Applicant can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors			<input type="radio"/> Yes <input type="radio"/> No	<b>Audiometric Test Results</b>			
Monocular vision			<input type="radio"/> Yes <input type="radio"/> No	Right Ear		Left Ear	
Referred to ophthalmologist or optometrist?			<input type="radio"/> Yes <input type="radio"/> No	500 Hz	1000 Hz	2000 Hz	500 Hz 1000 Hz 2000 Hz
Received documentation from ophthalmologist or optometrist?			<input type="radio"/> Yes <input type="radio"/> No	Average (right): _____		Average (left): _____	

**PHYSICAL EXAMINATION**

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen, or is readily amenable to treatment. Even if a condition does not disqualify a driver, the Medical Examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible, particularly if neglecting the condition could result in a more serious illness that might affect driving.

Check the body systems for abnormalities.

Body System	Normal	Abnormal	Body System	Normal	Abnormal
1. General	<input type="radio"/>	<input type="radio"/>	8. Abdomen	<input type="radio"/>	<input type="radio"/>
2. Skin	<input type="radio"/>	<input type="radio"/>	9. Genito-urinary system including hernias	<input type="radio"/>	<input type="radio"/>
3. Eyes	<input type="radio"/>	<input type="radio"/>	10. Back/Spine	<input type="radio"/>	<input type="radio"/>
4. Ears	<input type="radio"/>	<input type="radio"/>	11. Extremities/joints	<input type="radio"/>	<input type="radio"/>
5. Mouth/throat	<input type="radio"/>	<input type="radio"/>	12. Neurological system including reflexes	<input type="radio"/>	<input type="radio"/>
6. Cardiovascular	<input type="radio"/>	<input type="radio"/>	13. Gait	<input type="radio"/>	<input type="radio"/>
7. Lungs/chest	<input type="radio"/>	<input type="radio"/>	14. Vascular system	<input type="radio"/>	<input type="radio"/>

Discuss any abnormal answers in detail in the space below and indicate whether it would affect the driver's ability to operate a CMV. Enter applicable item number before each comment.

(Attach additional sheets if necessary)

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**Please complete only one of the following (Federal or State) Medical Examiner Determination sections:**

**MEDICAL EXAMINER DETERMINATION (Federal)**

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49):

- Does not meet standards (specify reason): \_\_\_\_\_
- Meets standards in 49 CFR 391.41; qualifies for 2-year certificate
- Meets standards, but periodic monitoring required (specify reason): \_\_\_\_\_  
 Driver qualified for:  3 months  6 months  1 year  other (specify): \_\_\_\_\_  
 Wearing corrective lenses  Wearing hearing aid  Accompanied by a waiver/exemption (specify type): \_\_\_\_\_  
 Accompanied by a Skill Performance Evaluation (SPE) Certificate  Qualified by operation of 49 CFR 391.64 (Federal)  
 Driving within an exempt intracity zone (see 49 CFR 391.62) (Federal)
- Determination pending (specify reason): \_\_\_\_\_  
 Return to medical exam office for follow-up on (must be 45 days or less): \_\_\_\_\_  
 Medical Examination Report amended (specify reason): \_\_\_\_\_  
 (if amended) Medical Examiner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_
- Incomplete examination (specify reason): \_\_\_\_\_

**If the driver meets the standards outlined in 49 CFR 391.41, then complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h), as appropriate.**

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: \_\_\_\_\_

Medical Examiner's Name (please print or type): \_\_\_\_\_

Medical Examiner's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Medical Examiner's Telephone Number: \_\_\_\_\_ Date Certificate Signed: \_\_\_\_\_

Medical Examiner's State License, Certificate, or Registration Number: \_\_\_\_\_ Issuing State: \_\_\_\_\_

MD  DO  Physician Assistant  Chiropractor  Advanced Practice Nurse

Other Practitioner (specify): \_\_\_\_\_

National Registry Number: \_\_\_\_\_

Medical Examiner's Certificate Expiration Date: \_\_\_\_\_

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**MEDICAL EXAMINER DETERMINATION (State)**

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations):

- Does not meet standards in 49 CFR 391.41 with any applicable State variances (specify reason): \_\_\_\_\_
- Meets standards in 49 CFR 391.41 with any applicable State variances
- Meets standards, but periodic monitoring required (specify reason): \_\_\_\_\_
  - Driver qualified for:  3 months  6 months  1 year  other (specify): \_\_\_\_\_
  - Wearing corrective lenses  Wearing hearing aid  Accompanied by a waiver/exemption (specify type): \_\_\_\_\_
  - Accompanied by a Skill Performance Evaluation (SPE) Certificate  Grandfathered from State requirements (State)

**If the driver meets the standards outlined in 49 CFR 391.41, with applicable State variances, then complete a Medical Examiner's Certificate, as appropriate.**

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: \_\_\_\_\_

Medical Examiner's Name (please print or type): \_\_\_\_\_

Medical Examiner's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Medical Examiner's Telephone Number: \_\_\_\_\_ Date Certificate Signed: \_\_\_\_\_

Medical Examiner's State License, Certificate, or Registration Number: \_\_\_\_\_ Issuing State: \_\_\_\_\_

MD  DO  Physician Assistant  Chiropractor  Advanced Practice Nurse

Other Practitioner (specify): \_\_\_\_\_

National Registry Number: \_\_\_\_\_ Medical Examiner's Certificate Expiration Date: \_\_\_\_\_

## Instructions for Completing the Medical Examination Report Form (MCSA-5875)

### I. Step-By-Step Instructions

#### Driver:

**Privacy Act Statement** - Please read, sign and date the Statement acknowledging that you understand the provisions of the Privacy Act of 1974 as written.

#### Section 1: Driver information

- **Personal Information:** Please complete this section using your name as written on your driver's license, your current address and phone number, your date of birth, age, gender, driver's license number and issuing state.
  - **CLP Applicant/CLP Holder/CDL Applicant/CDL Holder:** Check if you are a commercial learner's permit applicant or holder or a commercial driver's license applicant or holder. Commercial driver's license (CDL) means a license issued by a State or the District of Columbia which authorizes the individual to operate a class of a commercial motor vehicle (CMV). A CMV that requires a CDL is one that: (1) has a gross combination weight rating or gross combination weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating (GVWR) or gross vehicle weight (GVW) of more than 10,000 pounds; or (2) has a GVWR or GVW of 26,001 pounds or more; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is used to transport either hazardous materials requiring hazardous materials placards on the vehicle or any quantity of a select agent or toxin.
  - **Driver ID Verified By:** The Medical Examiner/staff completes this item and notes the type of photo ID used to verify the driver's identity such as, commercial driver's license, driver's license, or passport, etc.
  - **Question: Has your USDOT/FMCSA medical certificate ever been denied or issued for less than two years?** Please check the correct box "yes" or "no" and if you aren't sure check the "not sure" box.
- **Driver Health History:**
  - **Have you ever had surgery:** Please check "yes" if you have ever had surgery and provide a written explanation of the details (type of surgery, date of surgery, etc.)
  - **Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements):** Please check "yes" if you are taking any diet supplements, herbal remedies, or prescription or over the counter medications. In the box below the question, indicate the name of the medication and the dosage.
  - **#1-32:** Please complete this section by checking the "yes" box to indicate that you have, or have ever had, the health condition listed or the "No" box if you have not. Check the "not sure" box if you are unsure.
  - **Other Health Conditions not described above:** If you have, or have had, any other health conditions not listed in the section above, check "Yes" and in the box provided and list those condition(s).
  - **Any yes answers to questions #1-32 above:** If you have answered "yes" to any of the questions in the Driver Health History section above, please explain your answers further in the box below the question. For example, if you answered "yes" to question #5 regarding heart disease, heart attack, bypass, or other heart problem, indicate which type of heart condition. If you checked "yes" to question #23 regarding cancer, indicate the type of cancer. Please add any information that will be helpful to the Medical Examiner.
- **CMV Driver Signature and Date:** Please read the certification statement, sign and date it, indicating that the information you provided in Section 1 is accurate and complete.

## Medical Examiner:

### Section 2: Examination Report

- **Driver Health History Review:** Review answers provided by the driver in the driver health history section and discuss any “yes” and “not sure” responses. In addition, be sure to compare the medication list to the health history responses ensuring that the medication list matches the medical conditions noted. Explore with the driver any answers that seem unclear. Record any information that the driver omitted. As the Medical Examiner conducting the driver's physical examination you are required to complete the entire medical examination even if you detect a medical condition that you consider disqualifying, such as deafness. Medical Examiners are expected to determine the driver's physical qualification for operating a commercial vehicle safely. Thus, if you find a disqualifying condition for which a driver may receive a Federal Motor Carrier Safety Administration medical exemption, please record that on the driver's Medical Examiner's Certificate, Form MCSA-5876, as well as on the Medical Examination Report Form, MCSA-5875.
- **Testing:**
  - **Pulse rate and rhythm, height, and weight:** record these as indicated on the form.
  - **Blood Pressure:** record the blood pressure (systolic and diastolic) of the driver being examined. A second reading is optional and should be recorded if found to be necessary.
  - **Urinalysis:** record the numerical readings for the specific gravity, protein, blood and sugar.
  - **Vision:** The current vision standard is provided on the form. When other than the Snellen chart is used, give test results in Snellen-comparable values. When recording distance vision, use 20 feet as normal. Record the vision acuity results and indicate if the driver can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors; has monocular vision; has been referred to an ophthalmologist or optometrist; and if documentation has been received from an ophthalmologist or optometrist.
  - **Hearing:** The current hearing standard is provided on the form. Hearing can be tested using either a whisper test or audiometric test. Record the test results in the corresponding section for the test used.
- **Physical Examination:** Check the body systems for abnormalities and indicate normal or abnormal for each body system listed. Discuss any abnormal answers in detail in the space provided and indicate whether it would affect the driver's ability to safely operate a commercial motor vehicle.

*In this next section, you will be completing either the Federal or State determination, not both.*

- **Medical Examiner Determination (Federal):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49). Complete the medical examiner determination section completely. When determining a driver's physical qualification, please note that English language proficiency (49 CFR part 391.11: General qualifications of drivers) is not factored into that determination.
  - **Does not meet standards:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41.
  - **Meets standards in 49 CFR 391.41; qualifies for 2-year certification:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified and if selecting other, specify the time frame.
  - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, driving within an exempt intracity zone, etc.).
- **Determination pending:** Select this option when more information is needed to make a qualification decision and specify a date, on or before the 45 day expiration date, for the driver to return to the medical exam office for follow-up. This will allow for a delay of the qualification decision for as many as 45 days. If the disposition of the pending examination is not updated via the National Registry on or before the 45 day expiration date, FMCSA will notify the examining medical examiner and the driver in writing that the examination is no longer valid and that the driver is required to be re-examined.
  - **MER amended:** A Medical Examination Report Form (MER), MCSA-5875, may only be amended while in determination pending status for situations where new information (e.g., test results, etc.) has been received or there has been a change in the driver's medical status since the initial examination, but prior to a final qualification determination. Select this option when a Medical Examination Report Form, MCSA-5875, is being amended; provide the reason for the amendment, sign and date. In addition, initial and date any changes made on the Medical Examination Report Form, MCSA-5875. A Medical Examination Report Form, MCSA-5875, cannot be amended after an examination has been in determination pending status for more than 45 days or after a final qualification determination has been made. The driver is required to obtain a new physical examination and a new Medical Examination Report Form, MCSA-5875, should be completed.
- **Incomplete examination:** Select this when the physical examination is not completed for any reason (e.g., driver decides they do not want to continue with the examination and leaves) other than situations outlined under determination pending.
- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, Medical Examiner's Certificate expiration date, signature and date.
- **Medical Examiner Determination (State):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations). Complete the medical examiner determination section completely.
  - **Does not meet standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41 with any applicable State variances.
  - **Meets standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.
  - **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified and if selecting other, specify the time frame.
    - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, etc.).

- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, Medical Examiner's Certificate expiration date, signature and date.
- II. If updating an existing exam, you must resubmit the new exam results, via the Medical Examination Results Form, MCSA-5850, to the National Registry, and the most recent dated exam will take precedence.**
- III. To obtain additional information regarding this form go to the Medical Program's page on the Federal Motor Carrier Safety Administration's website at <http://www.fmcsa.dot.gov/regulations/medical>.**

**Public Burden Statement**

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to average approximately 1 minute per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRR, 1200 New Jersey Avenue, SE, Washington, DC, 20590.



U.S. Department of Transportation  
Federal Motor Carrier  
Safety Administration

**Medical Examiner's Certificate**  
(for Commercial Driver/Medical Certification)

I certify that I have examined **Last Name:** \_\_\_\_\_ **First Name:** \_\_\_\_\_ in accordance with (please check only one):

- the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when (check all that apply) **OR**
- the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations), and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when (check all that apply):

- Wearing corrective lenses  Accompanied by a \_\_\_\_\_ waiver/exemption  Driving within an exempt intracity zone (49 CFR 391.62) (Federal)
- Wearing hearing aid  Accompanied by a Skill Performance Evaluation (SPE) Certificate  Qualified by operation of 49 CFR 391.64 (Federal)
- Grandfathered from State requirements (State)

The information I have provided regarding this physical examination is true and complete. A complete Medical Examination Report Form, MCSA-5875, with any attachments embodies my findings completely and correctly, and is on file in my office.

Medical Examiner's Certificate Expiration Date \_\_\_\_\_

**Medical Examiner's Signature**

Medical Examiner's Telephone Number \_\_\_\_\_

Date Certificate Signed \_\_\_\_\_

Medical Examiner's Name (please print or type) \_\_\_\_\_

- MD  Physician Assistant  Advanced Practice Nurse
- DO  Chiropractor  Other Practitioner (specify) \_\_\_\_\_

Medical Examiner's State License, Certificate, or Registration Number \_\_\_\_\_

Issuing State \_\_\_\_\_

National Registry Number \_\_\_\_\_

Driver's Signature \_\_\_\_\_

Driver's License Number \_\_\_\_\_

Issuing State/Province \_\_\_\_\_

Driver's Address

CLP/CDL Applicant/Holder

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State/Province: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Yes  No

**Figure: 37 TAC §14.14(d)**

**TABLE I  
SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **one (1) penalty point** for each conviction if the date of the violation is within three (3) years of the date of the driving record evaluation.

Brakes not on all wheels required	Muffler violation
Carry passenger without a helmet	No automatic brake application on breakaway (trailer)
Clearance lamps improperly mounted	No beam indicator
Clearance lights not visible sufficient distance	No clearance lamps
Defective parking lamp(s)	No double trailer endorsement (CDL)
Defective safety glazing material	No fire extinguisher
Defective stop lamp(s)	No front seat belts (when required)
Defective tail lamp(s)	No hazmat endorsement (CDL)
Defective turn signal lamps	No head lamp(s) - not equipped
Defective windshield wiper	No motorcycle endorsement
Driving safety course sec. 143(a)(1)	No mud flaps or improper mud flaps
Endorsement violation CDL	No multiple-beam road lighting equipment
Fail to give info/render aid	No parking lamps
Hazardous material placard violation	No passenger vehicle endorsement (CDL)
Head lamps glaring not adjusted	No reflector(s) when required
Identification lamps not visible sufficient distance	No school bus endorsement (CDL)
Improper flashing lights	No stop lamps
Improper use of back-up lamp	No tail lamp(s) - not equipped
Improperly directed or adjusted lamp(s)	No tank vehicle endorsement (CDL)
Mirror violation	No turn signal lamps when required
More than four driving lamps lighted	No white flag on tow chain (or cable)

**TABLE I (continued)  
SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **one (1) penalty point** for each conviction if the date of the violation is within three (3) years of the date of the driving record evaluation.

No windshield wiper	Too many spot lamps
Pull more than one trailer or other vehicle	Unauthorized glass coating material
Red light(s) on front	Warning devices not installed or defective
Reflectors improperly mounted	Wrong color back-up lamp
Reflectors not visible sufficient distance	Wrong color clearance lamp(s)
Side marker lamps not visible sufficient distance	Wrong color identification lamps
Slow-moving vehicle emblem violation	Wrong color license plate light
Tail lamp(s) improperly located	Wrong color reflectors
Too many auxiliary driving lamps	Wrong color side marker
Too many auxiliary passing lamps	Wrong color signal device
Too many fog lamps	Wrong color spotlight

**TABLE II**  
**SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **two (2) penalty points** if the date of occurrence is within three (3) years of the date of the driving record evaluation. Persons disqualified because of penalty points assessed for crash\* involvement shall be notified of their right to a review. (See below for review procedure)

Accident	Accident non-incapacitating injury
Accident citation issued	Accident non-injury
Accident fatal	Accident no citation issued
Accident incapacitating injury	Accident possible injury

**REVIEW PROCEDURE FOR DISQUALIFICATION APPEAL**  
**(2 point penalty assessments under Table II)**

Two (2) points shall automatically be assessed for a crash involvement occurring within three (3) years of the date of the driver record evaluation which appears on the driver history record. Applicants disqualified on the basis of penalty points assessed for crash involvements appearing on their driving record may request a review by the person(s) designated by the employer to determine if they were a cause of the crash(es). The applicant must identify the specific crash involvement(s) to be reviewed. Request a copy of the crash report(s) on the approved form. Mail the form to Crash Records, Texas Department of Transportation at the address listed on the form.

The designated person(s) shall review information pertinent to the crash(es), which should include the **Texas Peace Officer's Crash Report**. In examining this report, consideration of such items as Charges Filed, Investigators' Narrative of What Happened, Diagram, and Factors/Conditions Contributing to the Crash should assist in making a determination as to whether or not the assessment of penalty points is appropriate.

If the designated person(s) reviews the crash report and any other pertinent information and determines that the applicant was not a cause of the crash(es), no penalty points should be assessed. If the designated person(s) determines that the applicant was a cause of the crash(es), two (2) penalty points shall be assessed for each crash.

\*The terms "crash" and "accident" shall be used interchangeably.

SBT-12 (Rev 10/2015)

**TABLE III  
SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **three (3) penalty points** for each conviction if the date of violation is within three (3) years of the date of the driving record evaluation.

Allow passenger to stand/sit improperly on a school bus	Cut corner left turn
Bus driver failed to activate warning signal/equipment	Cut in after passing
Bus failed to stop at RR crossing	Did not use designated lane or direction
Bus shifting gears while crossing RR tracks	Display fictitious driver license
Careless driving	Disregard solid green turn signal arrow
Carry motorcycle passenger under 5; except in side car	Disregard warning signs or barricades
Changed lane when unsafe	Disregarded flashing red signal (at stop sign, etc.)
Child passenger safety seat offense	Disregarded flashing yellow signal
Coasting	Disregarded lane control signal
Coasting (truck, truck tractor or bus, specify) with clutch disengaged	Disregarded no lane change sign
Consume alcohol while driving	Disregarded no passing zone
Crossed RR with heavy equipment without notice	Disregarded warning sign at construction
Crossed RR with heavy equipment without stop (or safety)	Drawbar over 15 feet
Crossing fire hose without permission	Drive into block where fire engine stopped
Crossing physical barrier	Driving around barricades
Cut across driveway to make turn	Driver opened door in moving traffic
Disregarded police officer	Drove center lane (not passing, not turning left)
Disregarded RR crossing gate or flagman	Drove on or across streetcar track where prohibited
Disregarded signal at RR crossing	Drove on sidewalk
Disregarded traffic control device	Drove on wrong side—RR crossing
Disregarded turn marks at intersection	Drove on wrong side of approaching bridge

SBT-12 (Rev 10/2015)

**TABLE III (continued)**  
**SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **three (3) penalty points** for each conviction if the date of violation is within three (3) years of the date of the driving record evaluation.

Drove on wrong side of divided highway	Fail to pass met vehicle to right
Drove on wrong side of road	Fail to pass to right safely
Drove on wrong side road approaching intersection	Fail to signal for stop
Drove wrong side of road approaching RR grade crossing	Fail to signal required distance before turning
Drove on wrong side road awaiting access to ferry	Fail to signal turn
Drove onto (or from) controlled access highway where prohibited	Fail to signal with turn indicator
Drove through safety zone	Fail to sound horn-mountain road
Drove to left of rotary traffic island	Fail to stop at marked RR crossing
Drove without lights-when required	Fail to stop at proper place (at traffic light)
Drove wrong way on one-way roadway	Fail to stop at proper place (flashing red signal)
Fail to comply with requirements on striking fixtures on highway	Fail to stop at proper place (not intersection)
Fail to comply with requirements on striking unattended vehicle	Fail to stop for approaching train
Fail to control speed	Fail to stop for school bus (or remain stopped, specify)
Fail to dim headlights-following	Fail to stop for streetcar-or stop at wrong location
Fail to dim headlights-meeting	Fail to stop-designated point-at stop sign
Fail to drive in single lane	Fail to stop-designated point-at yield sign
Fail to give hand signals when required	Fail to stop-emerging from alley, driveway or building
Fail to give one-half of roadway	Fail to use due care for pedestrian
Fail to give way when overtaken	Fail to use proper headlight beam
Fail to keep right on mountain roadway	Fail to yield at stop intersection
Fail to pass left safely	Fail to yield at yield intersection

**TABLE III (continued)  
SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **three (3) penalty points** for each conviction if the date of violation is within three (3) years of the date of the driving record evaluation.

Fail to yield right of way	Failed to signal lane change
Fail to yield right of way from private road	Fail to yield for blind or incapacitated person
Fail to yield right of way - changing lanes	Fleeing from police officer
Fail to yield right of way - turning right on red signal	Following ambulance
Fail to yield right of way at open intersection (specify type)	Following fire apparatus
Fail to yield right of way leaving (private drive, alley, building)	Following too closely
Fail to yield right of way on green arrow signal	Following too closely--truck
Fail to yield right of way on green signal	Following too closely--caravan
Fail to yield right of way on left at obstruction	Heavy equipment disregarded signal of train
Fail to yield right of way to emergency vehicle	Illegal backing
Fail to yield right of way to pedestrian at signal intersection	Illegal load extension
Fail to yield right of way to pedestrian in crosswalk	Illegal pass on right
Fail to yield right of way to pedestrian in crosswalk-no signal	Illegally passed streetcar
Fail to yield right of way to pedestrian on sidewalk	Impeding traffic
Fail to yield right of way to pedestrian-green arrow signal	Improper lane change
Fail to yield right of way to pedestrian turning right or left at intersection	Improper lookout
Fail to yield right of way-turning left (at intersection, alley, private road or driveway)	Improper passing
Fail to yield to vehicle in intersection	Improper turn
Fail to yield to vehicle leaving highway	Improper turn or stop hand signal
	Improper use of auxiliary driving lamps
	Improper use of auxiliary passing lamps

**TABLE III (continued)  
SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **three (3) penalty points** for each conviction if the date of violation is within three (3) years of the date of the driving record evaluation.

Improper use of fog lamps	Operate school bus over passenger design capacity
Improper use of lighting-hwy. equip.	Operate school bus with door open
Improper use of spot lamps	Operate vehicle with more than one passenger-minor
Improper use of turn indicator	Operate vehicle where prohibited
Increased speed while being overtaken	Operate vehicle with child in open bed
Interfere with funeral procession	Parked double
Interfere with streetcar	Parked on a bridge or in a tunnel
Leaving scene of accident	Parked on crosswalk
Lack of caution on green arrow signal	Parked on grade-failed to turn wheels
Made a U-turn on curve or hill	Parked on roadway
Negligent collision	Parked with headlamps not dimmed
No commercial driver license (CDL)	Parked within an intersection
No driver license	Parked without lights
No flag or projecting load-daytime	Parked without locking ignition and/or removing key
No lamps (or reflectors) on project load at night	Passed streetcar on left without reducing speed or without caution
No seat belt-driver	Passed through barricade
No seat belt-passenger	Passed vehicle stopped for pedestrian
Obstructed view through windshield	Passed-insufficient clearance
Obstructing traffic	Passengers/load obstruct drivers view or control
Open container DRIVER	Passing authorized emergency vehicle
Operate motorcycle without approved headgear	Permitted/operated unsafe vehicle

SBT-12 (Rev 10/2015)

**TABLE III (continued)  
SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **three (3) penalty points** for each conviction if the date of violation is within three (3) years of the date of the driving record evaluation.

Person(s) riding in trailer or semi-trailer	Turned so as to impede or interfere with streetcar
Prohibited motor vehicle on controlled-access highway	Turned when unsafe
Racing-drag racing-acceleration contest, etc.	Unauthorized use of siren, bell or whistle
Ran red light	Unrestrained child under 4 or less than 36 inches in height not secured
Ran stop sign	by child passenger safety seat
Reckless driving	Unrestrained child - safety seat violation
Restriction violation-CDL	Unsafe speed (too fast for conditions)
Riding boat/watercraft drawn by vehicle	Unsafe start
Slower vehicle failed to keep right	Unsafe start from parked, stopped or standing position
Speed under minimum	Use of school bus signal for wrong purpose
Speeding	Use/operate/install/purchase/sell radar interference device
Speeding-10 mph maximum for solid tire	Use wireless device while driving bus
Speeding-15 miles or over (CDL)	Use wireless device while driving--minor
Speeding > 10% above posted speed limit	Use wireless device in school zone
Speeding over limit	Vehicle hauling explosives (or flammable materials) failed to stop
Speeding--school zone	at RR crossing
Too many riders on motorcycle	Vehicle hailing explosives failed to reduce speed at RR crossing
Turned across dividing section	Vehicle without required equipment or in unsafe condition
Turned left from wrong lane	Violate DL restriction on occupational license
Turned right from wrong lane	Violate DL restrictions
Turned right too wide	

**TABLE III (continued)**  
**SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **three (3) penalty points** for each conviction if the date of violation is within three (3) years of the date of the driving record evaluation.

- |   |  |
|---|--|
| Violate operating hours--minor                        | Warning devices not displayed (flags, fuses, flares, reflectors) |
| Violated out of service order                         | Wrong side of road-not passing                                   |
| Violated out-of-service order hazmat and/or passenger | Wrong side, 4 or more lane, two-way roadway                      |

**TABLE IV**  
**SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **ten (10) penalty points** for each conviction if the date of the violation is within ten (10) years of the date of the driving record evaluation.

Aggravated assault with motor vehicle	Driving while license invalid bond forfeiture
Alcohol beverage code offense	Driving while license disqualified-CMV
Boating while intoxicated	Drug offense
Controlled substance act offense	Drug offense-bond forfeiture
Criminal negligent homicide with motor vehicle-1 <sup>st</sup> or 2 <sup>nd</sup> degree	Fail to stop and render aid-felony
Dangerous drug act offense	Fail to stop and render aid-misdemeanor
Driving under influence	Felony-use of CMV
Driving under influence (DUI)-minor	Felony-use of CMV-controlled substance
Driving while impaired	Intoxication assault
Driving while intoxicated	Intoxication assault motor vehicle
Driving while intoxicated – w/child under 15	Intoxication manslaughter
Driving while intoxicated-probated	Intoxication manslaughter motor vehicle
Driving while intoxicated bond forfeiture	Involuntary manslaughter with motor vehicle
Driving while license invalid	Volatile chemical act offense

**TABLE V**  
**SCHOOL BUS DRIVERS' DRIVING RECORD EVALUATION**

Assess **ten (10) penalty points** for each conviction if the date of the violation is within ten (10) years of the date of the driving record evaluation.

ALR CMV disqualification - .04 or more	ALR suspension - failure
ALR CMV disqualification - .04 or more HAZMAT	ALR suspension - refusal
ALR CMV disqualification - refusal	ALR suspension – Under 21 – Refusal
ALR CMV disqualification - refusal - HAZMAT	ALR suspension – Under 21 - Failure

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Cancer Prevention and Research Institute of Texas

Request for Applications C-16-RELCO-2

Company Relocation Product Development Awards

This award mechanism seeks to support companies or limited partnerships that are willing to relocate to Texas in developing new products for the diagnosis, treatment, or prevention of cancer; to establish infrastructure that is critical to the development of a robust industry; or to fill a treatment or research gap. Companies must have at least one round of professional institutional investment.

Award: Maximum amount \$20M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at [www.cpr.it.state.tx.us](http://www.cpr.it.state.tx.us). Applications will be accepted beginning at 7:00 a.m. Central Time on January 14, 2016, through 3:00 p.m. Central Time on February 25, 2016, and must be submitted via the CPRIT Application Receipt System ([www.CPRITGrants.org](http://www.CPRITGrants.org)). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201505932

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Filed: December 28, 2015



Request for Applications C-16-TEXCO-2

Texas Company Product Development Awards

This award mechanism seeks to support early-stage "start-up" and established companies in the development of innovative products, services, and infrastructure with significant potential impact on patient care. The proposed project must further the development of new products for the diagnosis, treatment, or prevention of cancer; must establish infrastructure that is critical to the development of a robust industry; or must fill a treatment or research gap. Companies must be headquartered in Texas.

Award: Maximum amount \$20M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at [www.cpr.it.state.tx.us](http://www.cpr.it.state.tx.us). Applications will be accepted beginning at 7:00 a.m. Central Time on January 14, 2016, through 3:00 p.m. Central Time on February 25, 2016, and must be submitted via the CPRIT Application Receipt System ([www.CPRITGrants.org](http://www.CPRITGrants.org)). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201505933

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Filed: December 28, 2015

## Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 216c ("RFP 216c") for Endangered Species Research Project for the Rio Grande Cooter. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 11, 2016.

Contact: Parties interested in submitting a proposal should contact Laurie Velasco, Assistant General Counsel, Contracts Section, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller will make the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> on Monday, January 11, 2016, after 10:00 a.m. Central Time. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. on Wednesday, January 20, 2016. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. On or about Monday, January 25, 2016, Comptroller expects to post responses to questions on the ESBD. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.**

Closing Date: Proposals must be delivered to the Issuing Office no later than **2:00 p.m. on Wednesday, February 10, 2016. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.**

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 11, 2016, after 10:00 a.m.; Questions Due - January 20, 2016, 2:00 p.m.; Official Responses to Questions posted - January 25, 2016, or as soon thereafter as practical; Proposals Due - **February 10, 2016, 2:00 p.m. CT**; Contract Execution - March 11, 2016, or as soon thereafter as practical; and Commencement of Work - on or after March 11, 2016. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201505841

Laurie Velasco  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: December 18, 2015

◆ ◆ ◆  
Notice of Request for Proposals

Pursuant to Chapter 403; Chapter 404, Subchapter G; and Chapter 2254, Subchapter B of the Texas Government Code, Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 214a ("RFP") from qualified, independent consultants to provide data gathering and analysis services in connection with a study of Texas state agency procurement and purchasing organizations to Comptroller. The successful respondent will be expected to begin performance of the contract on or about March 1, 2016.

Contact: Parties interested in submitting a proposal should contact Laurie Velasco, Assistant General Counsel, Contracts Section, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller will make the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, January 8, 2016, after 10:00 a.m. Central Time. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. on Friday, January 15, 2016. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. On or about Friday, January 22, 2016, Comptroller expects to post responses to questions on the ESBD. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.**

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts Section, no later than 2:00 p.m., on Friday, February 5, 2016. **Late proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Proposals in the Issuing Office.**

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from this RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 8, 2016, 10:00 a.m.; Questions Due - January 15, 2016, 2:00 p.m.; Official Responses to Questions posted - January 22, 2016, or as soon thereafter as practical; Proposals Due - **February 5, 2016, 2:00 p.m.**, Contract Execution - March 1, 2016, or as soon thereafter as practical; and Commencement of Work - March 1, 2016.

TRD-201505842  
Laurie Velasco  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: December 18, 2015

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/28/15 - 01/03/16 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/28/15 - 01/03/16 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/16 - 01/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/16 - 01/31/16 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201505885  
Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: December 22, 2015

◆ ◆ ◆  
Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/04/16 - 01/10/16 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/04/16 - 01/10/16 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201505964  
Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: December 29, 2015

◆ ◆ ◆  
**Employees Retirement System of Texas**

Request for Proposal to Provide Group Vision Care Services

In accordance with Chapter 1551 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") will issue a Request for Proposal ("RFP") seeking a qualified vendor ("Vendor") to provide group vision care services beginning September 1, 2016, for an initial term ending August 31, 2020. The Vendor shall provide the level of services required in the RFP and meet other requirements that are in the best interest of ERS, the Texas Employees Group Benefits Program ("GBP"), its Participants and the state of Texas. If selected, the Vendor shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

A Vendor wishing to submit a Proposal shall meet the minimum requirements and criteria as described in Article II of the RFP. Each Pro-

posal will be evaluated individually and relative to the Proposals of other qualified Vendors.

The RFP will be posted on or after December 22, 2015, to ERS' server. To access the RFP, Vendors shall email a request to [ivendorquestions@ers.state.tx.us](mailto:ivendorquestions@ers.state.tx.us). The Vendor must provide the following information in the request: RFP for Group Vision Care Services. The RFP will include documents for the Vendors' review and response.

General questions concerning the RFP and/or ancillary bid materials should be sent by email to [purchasing-all@ers.state.tx.us](mailto:purchasing-all@ers.state.tx.us). When submitting questions, the Vendor must provide the following information in the Re: line of its email request: RFP for Group Vision Care Services. The submission deadline for all RFP questions is expected to be January 5, 2016, at 4:00 p.m. CT or such other date specified in the RFP. ERS expects to complete the posting of all RFP questions and answers by 5:00 p.m. CT on January 12, 2016, or such other date specified in the RFP.

To be eligible for consideration, a Vendor is required to submit its Proposal in accordance with the instructions set forth in the RFP. All materials shall be received by ERS no later than 12:00 p.m. CT on January 26, 2016, or such other date specified in the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation of a Proposal. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interests of ERS, the GBP, its Participants and the state of Texas.

TRD-201505839

Paula A. Jones

General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas

Filed: December 18, 2015



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is February 8, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on February 8, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2015-1462-PWS-E; IDENTIFIER: RN101260677; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to provide facility records to the executive director at the time of the investigation; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; and 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: \$1,171; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Austin Western Railroad, L.L.C.; DOCKET NUMBER: 2015-1558-MSW-E; IDENTIFIER: RN106016041; LOCATION: Austin, Travis County; TYPE OF FACILITY: railroad maintenance; RULES VIOLATED: 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Austin White Lime Company; DOCKET NUMBER: 2015-1486-AIR-E; IDENTIFIER: RN100214337; LOCATION: Austin, Travis County; TYPE OF FACILITY: quarry; RULES VIOLATED: 30 TAC §§111.111(a)(1)(B), 101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2866, General Terms and Conditions and Special Terms and Conditions Numbers 3A and 10, and New Source Review Permit Numbers 6629 and PSDTX114, Special Conditions Number 14.A.(1), by failing to prevent particulate matter from becoming airborne during disposal of particulate collected in the baghouses and failing to comply with the opacity limit of 20% averaged over a six-minute period; PENALTY: \$5,401; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: BASF CORPORATION; DOCKET NUMBER: 2015-1392-PWS-E; IDENTIFIER: RN100634922; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(p)(2), by failing to provide the executive director with a written list of all the operators and operating companies that the public water system employs on an annual basis; 30 TAC

§290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; and 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: \$2,089; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Baytex USA Development, LLC; DOCKET NUMBER: 2015-1458-AIR-E; IDENTIFIER: RN106173891; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: natural gas plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3518/General Operating Permit Number 514, Site-Wide Requirements (b)(2), by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2015-0668-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3) and §116.715(a), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Flexible Permit Numbers 47256 and PSDTX402M3, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Federal Operating Permit (FOP) Number O1541, Special Terms and Condition (STC) Numbers 23 and 26, and NSR Flexible Permit Numbers 47256 and PSDTX402M3, SC Number 61B(1), by failing to control degassing until the volatile organic compound concentration is less than 10,000 parts per million (ppm) or 10% of the lower explosive limit; 30 TAC §122.143(4), THSC, §382.085(b), and FOP Number O1541, STC Number 22, by failing to maintain the benzene concentration below the 1 ppm limit for carbon canisters for water separators; 30 TAC §122.217(a) and THSC, §382.085(b), by failing to obtain an FOP revision prior to operating changes at a site; PENALTY: \$105,000; Compliance Supplemental Environmental Project offset amount of \$21,350; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: BRACKEN CHRISTIAN SCHOOL OF BULVERDE; DOCKET NUMBER: 2015-1521-PWS-E; IDENTIFIER: RN101248599; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.44(a)(4), by failing to locate the top of the waterlines below the frost line and in no case less than 24 inches below ground surface; 30 TAC §290.43(e), by failing to install all potable water storage tanks and pressure maintenance facilities in a lockable building or enclosed by an intruder-resistant fence with lockable gate; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations,

describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(f)(2), (3)(A)(i)(III) and (ii)(III), and (f)(3)(D)(i), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks annually; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.42(e)(5), by failing to properly cover the hypochlorination solution container to prevent the entrance of dust, insects, and other contaminants; PENALTY: \$1,950; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: City of Calvert; DOCKET NUMBER: 2015-1529-PWS-E; IDENTIFIER: RN101392355; LOCATION: Calvert, Robertson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock are not allowed within 50 feet of a water supply well; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents for all enclosures in which chlorine gas is being stored or fed; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is readily accessible outside the chlorinator room; 30 TAC §290.43(c)(8), by failing to ensure that the facility's clearwells, ground storage tanks, standpipes and elevated tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; and 30 TAC §290.46(m), by failing to initiate maintenance and house-

keeping practices to ensure the good working condition and general appearance of the facility and its; PENALTY: \$803; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Eagle Pass Water Works System; DOCKET NUMBER: 2015-1516-PWS-E; IDENTIFIER: RN101387710; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(8) and TCEQ Agreed Order Docket Number 2011-1967-PWS-E, Ordering Provision Number 2.e., by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; and 30 TAC §290.46(f)(2) and (3)(G), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request including records relating to other system-specific matters as directed by the executive director; PENALTY: \$5,330; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(10) COMPANY: City of Hitchcock; DOCKET NUMBER: 2015-0137-MWD-E; IDENTIFIER: RN101920031; LOCATION: City of Hitchcock, Galveston County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010690001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010690001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §319.7(c), by failing to maintain all monitoring and reporting records at the facility; and 30 TAC §305.125(1), and TPDES Permit Number WQ0010690001, Monitoring and Reporting Requirements Number 7.c., by failing to report any effluent violation deviating from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: \$70,313; Compliance Supplemental Environmental Project offset amount of \$21,3500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: City of San Benito; DOCKET NUMBER: 2015-0597-MWD-E; IDENTIFIER: RN103935599; LOCATION: San Benito, Cameron County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §§305.42, 305.65, and 305.125(2), by failing to obtain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$27,600; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: City of Willis; DOCKET NUMBER: 2015-1421-MWD-E; IDENTIFIER: RN102075793; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010315001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: D. TRAN, INCORPORATED dba Manns Chevron 2; DOCKET NUMBER: 2015-0700-PST-E; IDENTIFIER: RN102260213; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$13,628; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: D.R. Horton - Texas, Limited; DOCKET NUMBER: 2015-1180-WQ-E; IDENTIFIER: RN106946031; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: subdivision construction site; RULES VIOLATED: TWC, §26.121(a)(1) and Texas Pollutant Discharge Elimination System General Permit Number TXR15YL32, Part III, Section G.1, by failing to design, install, and maintain effective erosion and sediment controls to minimize the discharge of pollutants; PENALTY: \$9,000; Supplemental Environmental Project offset amount of \$3,600; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Enbridge Pipelines (Texas Gathering) L.P.; DOCKET NUMBER: 2015-1376-AIR-E; IDENTIFIER: RN104369889; LOCATION: Hemphill, Hemphill County; TYPE OF FACILITY: natural gas compression; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O2781/Oil and Gas General Operating Permit Number 514, Site-wide requirements (b)(1) and (2), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: EVERETT SQUARE INCORPORATED; DOCKET NUMBER: 2015-1372-PWS-E; IDENTIFIER: RN101176865; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$100; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Ismael Badillo; DOCKET NUMBER: 2015-1782-WOC-E; IDENTIFIER: RN103249199; LOCATION: Santa Rosa, Cameron County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: J AND K HARPER, LLC dba Midessa Oilpatch RV Park; DOCKET NUMBER: 2015-1597-PWS-E; IDENTIFIER: RN101230688; LOCATION: Odessa, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$660; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL

OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(19) COMPANY: Jack Gandesbery dba Good Samaritan Park; DOCKET NUMBER: 2015-1333-PWS-E; IDENTIFIER: RN108647108; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1), (h)(1) and (m) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply and failing to notify the executive director of the startup of a new public water supply; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: \$400; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: K H Jung Investment, Incorporated dba Times Market 35; DOCKET NUMBER: 2015-1375-PST-E; IDENTIFIER: RN102355344; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(b)(2) and TWC, §26.3475(d), by failing to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,126; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Kiewit Offshore Services, Limited; DOCKET NUMBER: 2015-1253-IHW-E; IDENTIFIER: RN102905064; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: offshore facilities fabricator; RULES VIOLATED: 30 TAC §335.261(a) and 40 Code of Federal Regulations (CFR) §273.15(c), by failing to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; 30 TAC §335.9(a)(2), by failing to submit to the executive director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year; 30 TAC §335.69(a)(1)(A) and §335.112(a)(8), and 40 CFR §262.34(a)(1)(i) and §265.174, by failing to inspect areas where waste containers are stored at least weekly to look for leaking containers or deterioration of containers caused by corrosion or other factors; 30 TAC §335.10 and §335.24(g), by failing to manifest Class 1 waste utilizing a Uniform Hazardous Waste Manifest; 30 TAC §335.513(c) and 40 CFR §262.40(c), by failing to maintain documentation of hazardous waste determinations and waste classifications, including analytical data and/or process knowledge; and 30 TAC §335.69(a)(3) and 40 CFR §262.34(a)(3), by failing to label or mark clearly each container with the words "Hazardous Waste" while being accumulated; PENALTY: \$10,978; Supplemental Environmental Project offset amount of \$4,391; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: NIGTON-WAKEFIELD WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1338-PWS-E; IDENTIFIER: RN101219277; LOCATION: Nigton, Trinity County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC

§290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12906 for calendar year 2006; PENALTY: \$75; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Ravenna-Nunnelee Water Supply Corporation; DOCKET NUMBER: 2015-1537-PWS-E; IDENTIFIER: RN101217214; LOCATION: Ravenna, Fannin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of Well Numbers 1, 2, and 3; PENALTY: \$210; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201505849

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 21, 2015



#### Notice of Public Meeting for TPDES Permit for Municipal Wastewater Renewal Permit Number WQ0010889001

APPLICATION. City of La Coste, P.O. Box 112, La Coste, Texas 78039, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010889001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day.

The facility is located at 11331 County Road 584, La Coste, in Medina County, Texas 78039. The treated effluent is discharged to an unnamed tributary; thence to Polecat Creek; thence to Medina River Below Medina Diversion Lake in Segment No. 1903 of the San Antonio River Basin. The unclassified receiving water use is high aquatic life use for the unnamed tributary and for Polecat Creek. The designated uses for Segment No. 1903 are high aquatic life use, public water supply, aquifer protection, and primary contact recreation. The discharge is below the Edwards Aquifer contributing, recharge and transition zones. All determinations are preliminary and subject to additional review and/or revisions. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.308476&lng=-98.805537&zoom=13&type=r>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, February 2, 2016 at 7:00 PM

La Coste VFW Hall

11230 Castro Avenue

La Coste, Texas 78039

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1 (800) 687-4040. *Si desea información en español, puede llamar 1 (800) 687-4040.* General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Medina County Courthouse, 1100 16th Street, Room 109, Hondo, Texas. Further information may also be obtained from City of La Coste at the address stated above or by calling Brian Cope of Klein and Cope Engineering at (210) 828-7070.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1 (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-201505906

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 22, 2015



### Request for Nominations - Water Utility Operator Licensing Advisory Committee

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for a total of seven individuals to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (the Committee).

The Committee membership represents various geographic areas of the state, ethnicity, businesses, governments, associations, and industries. If you have served on this advisory committee or nominated someone or self-nominated in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed each time.

The authority for the committee is found in 30 Texas Administrative Code Chapter 5. The objectives of the 13-member committee are: 1) to review training and educational material to promote quality education and training; 2) to review Job Analysis exam validations and to advise and assist regarding licensing requirements; 3) to assist with the review of rules, regulations, guidance documents, and policy statements; 4) to represent a diversity of viewpoints; and 5) to promote interaction with outside organizations.

All appointments will be made by the TCEQ commissioners. The committee meets as needed, usually four times a year. Meetings are held at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, and last approximately two - four hours. No financial compensation is available. Additional information regarding the Committee is available at the following website: [http://www.tceq.texas.gov/licensing/groups/wuoc\\_comm.html](http://www.tceq.texas.gov/licensing/groups/wuoc_comm.html).

To nominate an individual or to self-nominate, download and complete the Water Utility Operator Licensing Advisory Committee application from our website (previously listed), or contact us directly to request an application be mailed to you. You may submit a resume in addition to the application, but not in lieu of the application.

*Completed Applications must be received at TCEQ by 5:00 p.m., on February 19, 2016.* Applications may be delivered to Paul Munguia by email ([paul.munguia@tceq.texas.gov](mailto:paul.munguia@tceq.texas.gov)), fax ((512) 239-6272), or U.S. mail: Paul Munguia, Occupational Licensing Section, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201505931

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 28, 2015



## Department of Family and Protective Services

### Notice of Consultant Contract Continuation

The Texas Department of Family and Protective Services (DFPS or the Department) and the Child Protective Services (CPS) Transformation Initiative includes the continuation of a redesign of the Texas foster care system. The redesign project (the Project) will create needed sustainable placement resources in communities in order to meet the service needs of children and youth in foster care using the least restrictive placement settings available. DFPS has determined that distal placements increase the risk of poor child and family outcomes.

The Project requires effective communication, collaboration, and commitments between DFPS, existing and potential stakeholder groups. These groups include residential child care providers and their respective statewide associations, the Texas Judiciary, the Texas Health and Human Services Commission (HHSC), providers of services to families in the CPS system, the Texas Legislature, foster children and youth, CPS families, DFPS staff, and advocacy groups for children, families, and the Department.

A Consultant is needed to provide DFPS with specialized expertise in the planning and implementation of the Project. The Consultant will establish effective communication, collaboration, and commitments with stakeholders and manage the systemic changes that will occur as a result of the redesign. The Consultant must demonstrate a very high degree of familiarity with Child Welfare, the State of Texas, DFPS, the DFPS service delivery system, federal and Texas child welfare laws and funding, and significant expertise and experience in working closely with both the private and public child welfare communities.

The Project shifts incentives to providers in order to deliver effective, appropriate, and least restrictive services in communities needing services. The Consultant must integrate knowledge of CPS program and services with the financial impact that incentives will have for both DFPS and contracted service providers. The Consultant must effectively manage communications with providers on the financial impact of establishing service networks and/or expanding services to areas where none currently exist.

DFPS posted a Request for Proposal in January 2014, for consulting services and selected PDF Group, LLC, located at 5805 Shoal Creek, Austin, Texas 78757, as the consultant group for the Project. DFPS intends to renew this contract annually through January 2020. Pursuant to Texas Government Code §2254.031(a)(2) and Texas Government Code §2254.029 regarding renewals of major consulting contracts, the Department is posting this notice in the *Texas Register* as required. With this posting DFPS will renew the current contract with PDF Group, LLC, for state fiscal year 2016:

#### **Foster Care Remodeling Consultant Contract**

**Contractor Name: PDF Group, LLC**

**Contract #: 530-15-7777-00081**

**Renewal#: 2016.01**

The Texas Department of Family and Protective Services, hereinafter referred to as the Department, and PDF Group, LLC, hereinafter referred to as the Contractor, entered into a contract effective January 4, 2015, for the purpose of providing Consultant services with a payment type of Fee for Service. This contract has been renewed 0 time(s) previously. The procurement #530-15-0033, which resulted in this contract, anticipated possible renewals and amendments of the contract, and no additional procurement process is necessary before entering into this renewal. The Department and the Contractor agree to renew the contract with no changes to the statement of work and to include a proposed annual budget amount of \$250,000 for FY16.

All other terms and conditions of the Original Contract not in conflict with this renewal are continued in full force and effect.

This renewal #1 to contract # 530-15-7777-00081 is effective January 3, 2016, through January 4, 2017.

For the submission or information concerning this proposed renewal please contact: Judy Pavone, Contract Manager at (512) 438-3596 or email [judy.pavone@dfps.state.tx.us](mailto:judy.pavone@dfps.state.tx.us)

TRD-201505925

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Filed: December 28, 2015

### **Texas Health and Human Services Commission**

Notice of Public Hearing on Proposed Medicaid Payment Rates for Supported Employment and Employment Assistance

### **Services for the Youth Empowerment Services (YES) Waiver Program**

The proposed rates will be effective February 15, 2016.

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on January 21, 2016, at 9:00 a.m. to receive public comment on proposed revised payment rates for the YES waiver program operated by the Department of State Health Services (DSHS).

The hearing will be held in compliance with Texas Human Resources Code §32.0282 (relating to public hearing on rates) and Texas Administrative Code (TAC) Title 1, §355.105(g) (relating to general reporting and documentation, methods, and procedures), which require public notice of and hearings on proposed Medicaid reimbursements. The public hearing will be held in conference room #5155, fifth floor, of the Brown Heatly Building, located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through the front of the building facing Lamar Boulevard. Free parking is available in front of the building and in the adjacent parking garage. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to revise payment rates for Supported Employment and Employment Assistance services for the YES waiver program from an hourly rate to a fifteen minute rate. The proposed rates will be effective February 15, 2016.

**Methodology and Justification.** HHSC calculated the proposed payment rates in accordance with the rate setting methodologies codified in the Texas Administrative Code (TAC) Title 1, §355.9060 (relating to reimbursement methodology for the Youth Empowerment Services waiver program).

**Briefing Package.** On January 4, 2016, a briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml>. Interested parties may also obtain a free copy of the briefing package by contacting the HHSC Rate Analysis department by U.S. mail addressed to Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, free copies of the briefing package will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, written comment may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Rate Analysis Department, H-400, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-201505904

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 22, 2015

### **Public Notice: STAR Kids Client Information Session**

On January 26, 2016, from 6:00 p.m. - 8:00 p.m. at Hospitals of Providence Sierra Campus, Lower Level, 1625 Medical Center, El Paso,

Texas, 79902, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201505844

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 18, 2015



#### Public Notice: STAR Kids Client Information Session

On January 26, 2016, from 9:00 a.m. - 11:00 a.m. at Hospitals of Providence Sierra Campus, Lower Level, 1625 Medical Center, El Paso, Texas, 79902, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201505845

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 18, 2015



#### Public Notice: STAR Kids Client Information Session

On January 26, 2016, from 1 p.m. - 3 p.m. at Hospitals of Providence Sierra Campus, Lower Level, 1625 Medical Center, El Paso, Texas, 79902, the Texas Health and Human Services Commission will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, 512-730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at 512-462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201505846

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 18, 2015

◆ ◆ ◆

## Texas Department of Housing and Community Affairs

### Notice of Funding Availability for the 2016-2017 Texas Bootstrap Loan Program

#### I. Source of Funds.

The Texas Bootstrap Loan Program is funded through the Housing Trust Fund which was established by the 72nd Legislature, Senate Bill 546, Texas Government Code §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

#### II. Notice of Funding Availability (NOFA) Summary.

The Texas Department of Housing and Community Affairs (the "Department"), through its Office of Colonia Initiatives, announces the availability of approximately \$6.8M of State of Texas Housing Trust Funds for Fiscal Year 2016-2017 for the Texas Bootstrap Loan ("Bootstrap") Program. The first \$3.8M of funding will be available for reservation on Wednesday, January 13, 2016. The Department will continue to accept reservations on an ongoing basis until August 31, 2018 or until all funding has been committed. Additional funds may be added to this NOFA from loan repayments, interest earnings and deobligations from prior years.

The purpose of the Bootstrap Program is to purchase land and/or build new residential or improve existing residential housing through self-help construction methods for Owner-Builders, including persons with special needs, whose household income does not exceed 60 percent of the Area Median Family Income.

To be able to reserve Bootstrap Program funds on behalf of Owner-Builders, nonprofit organizations must undergo certification as a "Non-profit Owner-Builder Housing Provider" (NOHP) by the Department and execute a loan origination agreement. Two-thirds of the funds are set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75 percent of the current state median income. The remaining one-third is released statewide.

#### III. Additional Information.

The "2016-2017 Texas Bootstrap Loan Program" NOFA is posted on the Department's website at <http://www.tdhca.state.tx.us/oci/bootstrap.htm>. Questions regarding the Bootstrap Program NOFA may be addressed to Raul Gonzales at (512) 475-1473 or [raul.gonzales@tdhca.state.tx.us](mailto:raul.gonzales@tdhca.state.tx.us).

TRD-201505880

Timothy K. Irvine  
Executive Director

Texas Department of Housing and Community Affairs  
Filed: December 21, 2015

◆ ◆ ◆

### Notice of Funding Availability for the 2016-2017 Amy Young Barrier Removal Program

#### I. Source of Funds.

The Amy Young Barrier Removal Program is funded through the Housing Trust Fund which was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

#### II. Notice of Funding Availability (NOFA) Summary.

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of \$1,614,647 of State of Texas Housing Trust Funds for Fiscal Year 2016 for the Amy Young Barrier Removal ("AYBR") Program, originally released on September 14, 2015, and re-released on October 26, 2015. The Department also announces the upcoming availability of \$1.52M of State of Texas Housing Trust Funds for Fiscal Year 2017 for the AYBR Program, to be released on June 1, 2016. Funds are available through the Department's first-come, first-served online Reservation System. Additional funds may be added to this NOFA from loan repayments, interest earnings and deobligations from prior years.

The AYBR Program provides one-time grants of up to \$20,000 to Persons with Disabilities in a household qualified as earning 80% or less of the applicable Area Median Family Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

To be able to reserve AYBR Program funds on behalf of an eligible Person with Disabilities, nonprofit organizations, units of local government, councils of government, local mental health authorities, and public housing authorities must apply to be a Program Administrator and execute an AYBR Program Reservation System Agreement.

#### III. Additional Information.

The 2016-2017 AYBR Program NOFA is posted on the Department's website at <http://www.tdhca.state.tx.us/hf/single-family/amy-young.htm>. Questions regarding the AYBR Program NOFA may be addressed to Diana Velez at (512) 475-4828 or [diana.velez@tdhca.state.tx.us](mailto:diana.velez@tdhca.state.tx.us).

TRD-201505882

Timothy K. Irvine  
Executive Director

Texas Department of Housing and Community Affairs  
Filed: December 21, 2015

◆ ◆ ◆

## Legislative Budget Board

### Request for Proposal

Notice: The Legislative Budget Board (LBB) issues this Request for Proposal (RFP) to solicit proposals from qualified, independent Respondents to assist the LBB in conducting two management and performance reviews, one of the Texas School for the Deaf, and one of the Texas School for the Blind and Visually Impaired. The proposal should identify the Respondent's methodology and plan to accomplish the scope of services identified in this RFP. The selected Respondent (Respondent) will develop accomplishments, findings, and recommendations for containing costs and improving management strategies for the schools, thus ultimately promoting better education for Texas students through greater administration efficiency at the schools. The Respondent must be available to begin performance of any contract executed as a result of this RFP on or about February 1, 2016.

Contact: The LBB is the Issuing Office and the sole point of contact for this RFP. Questions concerning this RFP must be emailed to: [performancereview.contracts@lbb.state.tx.us](mailto:performancereview.contracts@lbb.state.tx.us).

Deadline for questions: January 4, 2016 2:00 p.m. [performancereview.contracts@lbb.state.tx.us](mailto:performancereview.contracts@lbb.state.tx.us).

Closing date: January 20, 2016 2:00 p.m.

TRD-201505884

◆ ◆ ◆  
**Texas Lottery Commission**

Scratch Ticket Game Number 1782 "Crazy Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1782 is "CRAZY CASH".  
The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1782 shall be \$5.00 per  
Ticket.

1.2 Definitions in Scratch Ticket Game No. 1782.

A. Display Printing - That area of the Scratch Ticket outside of the area  
where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play  
Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the  
Scratch Ticket that is used to determine eligibility for a prize. Each  
Play Symbol is printed in Symbol font in black ink in positive except  
for dual-image games. The possible black Play Symbols are: 01, 04,  
05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24,  
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,  
44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, 3X SYMBOL, \$5.00, \$10.00,  
\$15.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each  
Play Symbol which explains the Play Symbol. One caption appears  
under each Play Symbol and is printed in caption font in black ink  
in positive. The Play Symbol Caption which corresponds with and  
verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1782 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI

50	FFTY
2X SYMBOL	WINX2
3X SYMBOL	WINX3
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$250	TWO FTY
\$500	FIV HUN
\$1,000	ONE THOU
\$100,000	100 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$250 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1782), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1782-0000001-001.

K. Pack - A Pack of the "CRAZY CASH" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Scratch Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Scratch Ticket 001 will be shown on the front of the Pack and the front of Scratch Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "CRAZY CASH" Scratch Ticket Game No. 1782.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch

Ticket. A prize winner in the "CRAZY CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "3X" Play Symbol, the player wins TRIPLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$100,000 and \$1,000 will each appear at least once, except on Tickets winning twenty (20) times.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20, 50 and \$50).

J. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "2X" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "2X" (WINX2) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

N. The "2X" (WINX2) Play Symbol will never appear more than once on a Ticket.

O. The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

P. The "3X" (WINX3) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "3X" (WINX3) Play Symbol will win TRIPLE the PRIZE for that Play Symbol and will win as per the prize structure.

R. The "3X" (WINX3) Play Symbol will never appear more than once on a Ticket.

S. The "3X" (WINX3) Play Symbol will never appear on a Non-Winning Ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "CRAZY CASH" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CRAZY CASH" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CRAZY CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "CRAZY CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult

member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "CRAZY CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,280,000 Scratch Tickets in Scratch Ticket Game No. 1782. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1782 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	956,800	8.65
\$10	533,600	15.52
\$15	220,800	37.50
\$20	184,000	45.00
\$50	83,720	98.90
\$100	37,490	220.86
\$250	3,335	2,482.76
\$500	2,714	3,050.85
\$1,000	115	72,000.00
\$100,000	8	1,035,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1782 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1782, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201505923  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 28, 2015



Scratch Ticket Number 1793 "Weekly Grand"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1793 is "WEEKLY GRAND". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1793 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1793.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$100, \$300, GRAND SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL, TOP HAT SYMBOL, 01, 02, 03, 04, 05, 06, 07 and 08.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1793 - 1.2D

PLAY SYMBOL	CAPTION
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$40.00	FORTY
\$100	ONE HUN
\$300	THR HUN
GRAND SYMBOL	WEEK
CLOVER SYMBOL	CLOVER
DIAMOND SYMBOL	DIAMOND
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTOGLD
MONEY BAG SYMBOL	MONEYBAG
TOP HAT SYMBOL	TOPHAT
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$100 or \$300.

H. High-Tier Prize - A prize top prize of \$1,000/per week for 20 years or Cash Value Option). The Cash Value Option of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1793), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1793-0000001-001.

K. Pack - A Pack of "WEEKLY GRAND" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Scratch Ticket will be folded over to expose a front and back of one Scratch Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "WEEKLY GRAND" Scratch Ticket Game No. 1793.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WEEKLY GRAND" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 15 (fifteen) Play Symbols. GAME 1: If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 3 "GRAND" Play Symbols, the player wins \$1,000 per week for 20 years. GAME 2: If a player matches 2 out of 3 Play Symbols, the player wins \$20. GAME 3: If a player's YOUR NUMBER Play Symbol beats THEIR NUMBER Play Symbol in any one ROW across, the player wins the PRIZE for that ROW. If the PRIZE won is a "GRAND" Play Symbol, the player wins \$1,000 per week for 20 years. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut and have exactly 15 (fifteen) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 15 (fifteen) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to four (4) times in accordance with the approved prize structure.

B. GENERAL: Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the matching spots.

C. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. GAME 1: Winning games can have only one (1) set of three (3) matching Prize Symbols.

E. GAME 1: Winning games cannot have more than three (3) matching Prize Symbols.

F. GAME 1: No game will contain two (2) sets of three (3) matching Prize Symbols.

G. GAME 2: There will never be more than two (2) matching Play Symbols in a game.

H. GAME 3: The "YOUR NUMBER" Play Symbol will never be the same as the "THEIR NUMBER" Play Symbol.

I. GAME 3: The "YOUR NUMBER" Play Symbol will never be a "01" Play Symbol.

J. GAME 3: The "THEIR NUMBER" Play Symbol will never be an "08" Play Symbol.

K. GAME 3: Non-winning ROWS on a Ticket will not have the same Play Symbols regardless of order.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$100 or \$300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the

procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WEEKLY GRAND" top level prize of \$1,000 per week for 20 years, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. When claiming a "WEEKLY GRAND" Scratch Ticket Game prize of \$1,000 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$1,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$4,413.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

D. As an alternative method of claiming a "WEEKLY GRAND" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$300, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code Section 403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WEEKLY GRAND" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "WEEKLY GRAND" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 37,440,000 Scratch Tickets in the Scratch Ticket Game No. 1793. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1793 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	5,091,840	7.35
\$4	2,995,200	12.50
\$5	599,040	62.50
\$10	449,280	83.33
\$20	149,760	250.00
\$40	168,480	222.22
\$100	17,316	2,162.16
\$300	10,608	3,529.41
\$1,000/week for 20 years	5	7,488,000.00

\* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.95. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1793 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1793, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201505924  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 28, 2015



**North Central Texas Council of Governments**

Transit Management Services - Request for Proposals

The North Central Texas Council of Governments (NCTCOG) is requesting proposals from consulting firms or individuals to provide onsite transit management services on behalf of the Texoma Area Paratransit System (TAPS), a transit agency that is a subrecipient of NCTCOG in Sherman, Texas. The individual or firm will assist in the management of the daily operations of this transit agency and ensure the appropriate policies and procedures are in place to meet federal and state requirements. The selected individual or firm will report to the TAPS board of directors and work alongside TAPS Transit Interim CEO to provide strategic direction, meet financial obligations, maximize resources, and attain results to implement the mission. TAPS is a private, non-profit corporation and a political subdivision of the State of Texas. NCTCOG's role and interest is to provide resources to assist subrecipients in operations and federal compliance responsibilities.

Proposals must be received no later than 5:00 p.m., on Friday, February 5, 2016, to Amy Wasielewski, Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Proposal (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, January 8, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201505984

Amy Wasielewski  
Transportation Planner  
North Central Texas Council of Governments  
Filed: December 29, 2015

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on December 22, 2015, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L. P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 45463.

The requested amendment is to expand the service area footprint to include the city limits of Huntington, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45463.

TRD-201505957  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 28, 2015

◆ ◆ ◆  
**Notice of Application for Amendment to a Service Provider Certificate of Operating Authority**

On December 21, 2015, Granite Telecommunications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend a service provider certificate of operating authority Number 60559. Applicants request approval of a change in service area.

Docket Style and Number: Application of Granite Telecommunications, LLC for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 45460.

Application: Granite Telecommunications, LLC seeks to expand its certificated service area to include the operating service territories of Consolidated Communications of Fort Bend Company and Consolidated Communications of Texas Company.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than January 15, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45460.

TRD-201505961  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2015

◆ ◆ ◆  
**Notice of Application for Approval of Accelerated Depreciation Rate**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 22, 2015, for approval of an accelerated depreciation rate pursuant to Sections 52.252 and 53.056, of the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 66.016 (West 2007 & Supp. 2015).

Docket Title and Number: Application of Big Bend Telephone Company for Approval of Accelerated Depreciation Rate, Docket Number 45465.

The Application: Big Bend Telephone Company (Big Bend) filed an application to accelerate the depreciation rate for soft switch equipment currently within subaccount 2212.35 - Soft Switch, effective January 1, 2015. Big Bend proposed a depreciation rate change from 10% to 14.91% such that the equipment can be fully depreciated by the end of 2019.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45465.

TRD-201505958  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 28, 2015

◆ ◆ ◆  
**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 18, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Foster Consolidated Investments, LLC and Jonah Water Special Utility District for Sale, Transfer or Merger of Facilities and Certificate Rights in Williamson County, Docket Number 45456.

The Application: Foster Consolidated Investments, LLC (Foster) and Jonah Water Special Utility District (Jonah Water SUD) filed an application for approval of a sale transfer or merger in which Jonah Water SUD will acquire a portion of Foster's certificated service area under water Certificate of Convenience and Necessity (CCN) No. 11977 in Williamson County, and associated facilities. Jonah Water SUD's CCN No. 10970 would be amended.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45456.

TRD-201505903

Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2015



### Notice of Application to Discontinue Service Provider Certificate of Operating Authority

On December 21, 2015, Starview Solutions, LLC filed an application with the Public Utility Commission of Texas (commission) to discontinue its service provider certificate of operating authority (SPCOA) Number 60828. Applicants request approval to discontinue service.

Docket Style and Number: Application of Starview Solutions, LLC to Discontinue its Service Provider Certificate of Operating Authority, Docket Number 45461.

Application: Starview Solutions, LLC stated that the company has no customers and no longer offers telecommunications services of any kind in Texas, and wishes to discontinue service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than January 15, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45461.

TRD-201505963  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2015



### Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) on December 21, 2015, of notice of intent to serve a 899-acre tract of land in Denton County.

Docket Style and Number: Mustang Special Utility District Notice of Intent to Provide Water Service to Land Decertified from Aqua Texas, Inc. in Denton County, Docket No. 45462.

The Application: On December 1218, 2015, pursuant to 16 TAC §24.113(i), Mustang Special Utility District filed with the Public Utility Commission of Texas (Commission) notice of its intent to serve an approximately 899-acre tract of land in Denton County that was decertified from Aqua Texas, Inc.'s (Aqua's) water Certificate of Convenience and Necessity (CCN) Number 13201. The 899-acre tract of land at issue was decertified pursuant to Texas Water Code (TWC) §13.254(a-5).

TWC §13.254(a-6) provides that the Commission may require an award of compensation to a decertified retail public utility that is the subject of a petition filed under TWC §13.254(a-5). TWC §13.254(e) provides that the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. Further, the Commission is required to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the Commission of its intent to provide service to the decertified area.

Persons wishing to comment should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45462.

TRD-201505959  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 28, 2015



### Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on December 18, 2015, of notice of intent to serve a 111-acre tract in Denton County.

Docket Style and Number: Mustang Special Utility District Notice of Intent to Provide Water to Area Decertified from Aqua Texas, Inc.'s in Denton County, Docket Number 45450.

The Application: On December 18, 2015, pursuant to 16 TAC §24.113(i), Mustang Special Utility District filed with the commission a notice of its intent to serve a 111-acre tract in Denton County that was decertified from water Certificate of Convenience and Necessity (CCN) Number 13201 held by Aqua Texas, Inc. The 111-acre tract at issue was decertified pursuant to Texas Water Code (TWC) §13.254(a-5).

TWC §13.254(a-6) provides that the commission may require an award of compensation to a decertified retail public utility that is the subject of a petition filed under TWC §13.254(a-5). TWC §13.254(e) provides that the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. Further, the commission is required to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

Persons wishing to comment should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45450.

TRD-201505962  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2015



## Texas State Soil and Water Conservation Board

### USDA-Natural Resources Conservation Service - State Technical Advisory Committee Meeting

On behalf of the USDA-Natural Resources Conservation Service (NRCS), the Texas State Soil and Water Conservation Board announces USDA-NRCS has scheduled a meeting of the State Technical Advisory Committee (STAC) Meeting for January 20 - 21, 2016, from 8:00 a.m. - 5:00 p.m. on January 20th and from 8:00 a.m. - 12 noon

on January 21st at the Crowne Plaza Austin North Central Hotel, 6121 North I-35, Austin, Texas.

The draft agenda for the STAC meeting scheduled for January 20 - 21, 2015, is as follows:

**January 20th**

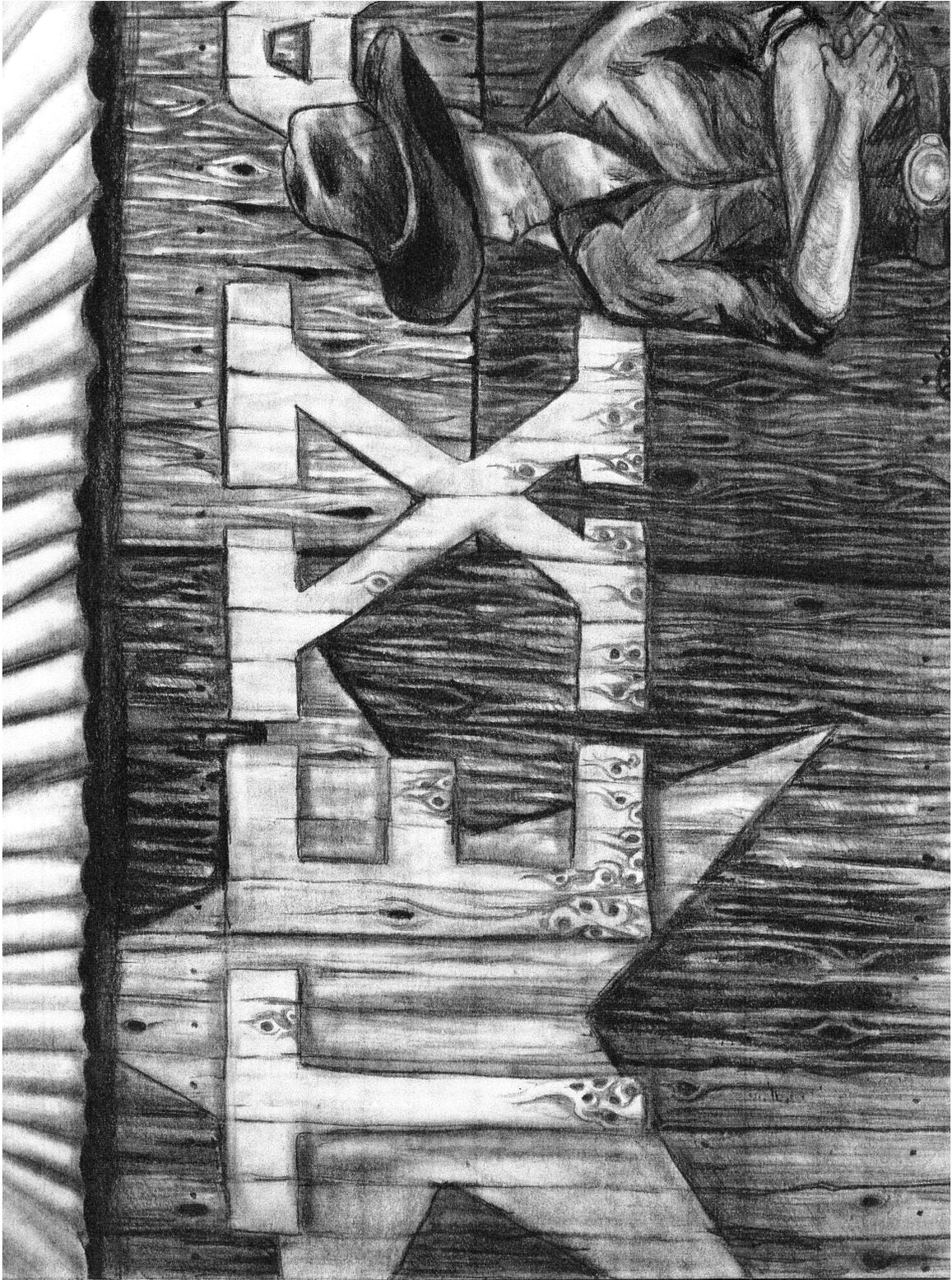
- 8:00 a.m. - 9:00 a.m. Registration
- 9:00 a.m. Welcome and Opening Comments - Salvador Salinas
- 10:00 a.m. New Agronomy Standards - Cliff Kinnebrugh
- 10:30 a.m. New Engineering Standards - John Mueller
- 11:00 a.m. Program Overview - Mark Habiger, Claude Ross, Troy Daniell
- 12:00 noon - 1:00 p.m. Lunch on your own
- 1:00 p.m. Partnerships and Leveraging Dollars - Salvador Salinas
- 1:30 p.m. Restore ACT - Tomas Dominguez
- 2:00 p.m. Statewide Proposals - Mark Habiger

5:00 p.m. Adjourn

**January 21**

- 8:00 a.m. FSA Update - Judith Canales, Mickey Woodward
  - 9:30 a.m. Committee Reports - Kristy Oates
  - 10:00 a.m. Grazing Land Standards - Jeff Goodwin
  - 10:30 a.m. Forestry Standards - Mike Oliver
  - 11:00 a.m. Biology Standards - Russell Castro
  - 11:15 a.m. Closing Discussion
  - 12:00 noon Adjourn
- TRD-201505886  
Mel Davis  
Special Projects Coordinator  
Texas State Soil and Water Conservation Board  
Filed: December 22, 2015





## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

## SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is \$382 annually for first-class mail delivery and \$259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)



**LexisNexis**<sup>®</sup>  
It's how you know<sup>™</sup>