

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

#### CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES

**1 TAC §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67, 163.69**

The State Office of Administrative Hearings (SOAH) adopts the repeal of Chapter 163, §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67, and 163.69. The repeal is adopted without changes to the proposal as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7947) and will not be republished.

The existing chapter has been developed to provide a uniform set of procedural rules to be followed in arbitration proceedings for certain enforcement actions of the Texas Department of Aging and Disability Services at SOAH. Repeal of the existing rules will allow the simultaneous adoption of new rules, which were concurrently proposed, that remain uniform in application but that are clearer, updated, and easier to use.

No comments to the repeal were received during the 30-day comment period.

The repeal is adopted under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The repeal affects Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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#### CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES REGARDING CONVALESCENT AND NURSING HOMES

The State Office of Administrative Hearings (SOAH) adopts new Chapter 163, Arbitration Procedures for Certain Enforcement Actions of the Department of Aging and Disability Services (DADS) Regarding Convalescent and Nursing Homes, consisting of Subchapter A, §§163.1, 163.3, and 163.5, concerning general information; Subchapter B, §§163.51, 163.53, 163.55, 163.57, and 163.59, concerning election and initiation of arbitration; Subchapter C, §163.101, concerning filing and service of documents; Subchapter D, §§163.151, 163.153, 163.155, 163.157, 163.159, and 163.161, concerning selection of arbitrator and costs; Subchapter E, §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, and 163.235, concerning arbitration proceedings; and Subchapter F, §§163.251, 163.253, and 163.255, concerning arbitration order. Subchapter B, §163.53; Subchapter D, §163.155; Subchapter E, §163.227 and §163.235; and Subchapter F, §163.251 are adopted with changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7948). Subchapter A, §§163.1, 163.3, and 163.5; Subchapter B, §§163.51, 163.55, 163.57, and 163.59; Subchapter C, §163.101; Subchapter D, §§163.151, 163.153, 163.157, 163.159, and 163.161; Subchapter E, §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.229, 163.231, and 163.233; and Subchapter F, §163.253 and §163.255 are adopted without changes to the proposed text and will not be republished.

The new chapter is being adopted to update and reorganize the chapter for ease of reference and use.

New Subchapter A is entitled General Information and contains §§163.1, 163.3, and 163.5. These sections set out SOAH's rules concerning definitions; construction of this chapter; and other SOAH rules of procedure. No changes have been made to this subchapter as proposed.

New Subchapter B is entitled Election and Initiation of Arbitration and contains §§163.51, 163.53, 163.55, 163.57, and 163.59. These sections set out SOAH's rules concerning opportunity to elect arbitration; notice of election of arbitration; initiation of arbitration; jurisdictional challenges; and changes of claim. Section 163.53 is adopted with changes. The changes are nonsubstantive. In §163.53(d)(1) the parenthetical language "(relating to Opportunity to Elect Arbitration)" was determined to be unnecessary and deleted.

New Subchapter C is entitled Filing and Service of Documents and contains §163.101. This section sets out SOAH's rule concerning filing and service of documents. No changes have been made to this subchapter as proposed.

New Subchapter D is entitled Selection of Arbitrator and Costs and contains §§163.151, 163.153, 163.155, 163.157, 163.159, and 163.161. These sections set out SOAH's rules concerning selection of arbitrator; notice to and acceptance of appointment by arbitrator who is not a SOAH judge; vacancies; qualifications of arbitrators; duties of the arbitrator; and cost of arbitration. Section 163.155 is adopted with changes. The changes are nonsubstantive. In §163.155 the parenthetical language "(relating to Selection of Arbitrator)" was determined to be unnecessary and deleted.

New Subchapter E is entitled Arbitration Proceedings and contains §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, and 163.235. These sections set out SOAH's rules concerning exchange and filing of information; preliminary conference; discovery; stenographic record; electronic record; interpreters; communication of parties with arbitrator; date, time, and place of hearing; representation; attendance required; public hearings and confidential material; order of proceedings; control of proceedings; evidence; witnesses; exclusion of witnesses; evidence by affidavit; and evidence filed after the hearing. Section 163.227 and §163.235 are adopted with changes. The changes are nonsubstantive. In §163.227(c) the parenthetical language "(relating to Discovery)" was determined to be unnecessary and deleted. In §163.235 the parenthetical language "(relating to Filing and Service of Documents)" was determined to be unnecessary and deleted.

New Subchapter F is entitled Arbitration Order and contains §§163.251, 163.253, and 163.255. These sections set out SOAH's rules concerning the order; effect of the order; and clerical error. Section 163.251 is adopted with changes. The changes are nonsubstantive. In §163.251(a) the parenthetical language "(relating to Opportunity to Elect Arbitration)" was determined to be unnecessary and deleted.

No comments were received during the 30-day comment period.

## SUBCHAPTER A. GENERAL INFORMATION

### 1 TAC §§163.1, 163.3, 163.5

#### Statutory Authority

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration

procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. ELECTION AND INITIATION OF ARBITRATION

### 1 TAC §§163.51, 163.53, 163.55, 163.57, 163.59

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

#### §163.53. Notice of Election of Arbitration.

(a) Pursuant to Code §242.252(b), in an enforcement lawsuit filed in court:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the court in which the lawsuit is pending and sending copies to the office of the attorney general and to DADS or its designee.

(A) The notice of election must be filed no later than the tenth day after the date on which the answer is due or the date on which the answer is filed with the court, whichever is earlier.

(B) If a civil penalty is requested by an amended or supplemental pleading in a lawsuit, the affected facility must file its notice of election of arbitration not later than the tenth day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(C) If the election of arbitration is challenged, the parties shall seek a prompt ruling from the court on the challenge. If a court finds SOAH has jurisdiction to conduct an arbitration, the Health and Human Services Appeal Division shall immediately file the court's

order and the notice of election of arbitration at SOAH and request the arbitration be processed in the usual manner.

(2) DADS may elect arbitration by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under paragraph (1) of this subsection.

(b) In an administrative enforcement proceeding originally docketed at SOAH:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the docket clerk at SOAH no later than the tenth day after receiving notice of hearing that complies with the requirements of the Administrative Procedure Act. A copy of this election shall be sent to DADS's representative of record in the relevant action and to DADS or its designee.

(2) DADS may elect arbitration under this chapter by filing a notice of election with the docket clerk at SOAH no later than the date that the facility may elect arbitration under paragraph (1) of this subsection and sending a copy of the notice of election to the facility's representative of record in the relevant action.

(c) The date of filing shall be the date affixed upon a notice of election by a date-stamp utilized by the docket clerk at the court for judicial proceedings, or by the docket clerk of SOAH for administrative proceedings.

(d) The notice of election shall include a written statement that contains:

(1) the nature of the action that is being submitted to arbitration, as listed in this Subchapter, §163.51(a);

(2) a brief description of the factual and/or legal controversy, including an estimate of the amount of any penalties sought;

(3) an estimate of the length of the arbitration hearing on the merits and the extensiveness of the record necessary to determine the matter;

(4) the remedy sought;

(5) a statement that the facility has not been the subject of an arbitration order within the previous five years;

(6) any special information that should be considered in selecting an arbitrator;

(7) if a hearing location other than Austin is requested, an explanation for requesting that location;

(8) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration; and

(9) a statement that arbitration is not otherwise prohibited by the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

### 1 TAC §163.101

The new section is adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new section affects Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. SELECTION OF ARBITRATOR AND COSTS

### 1 TAC §§163.151, 163.153, 163.155, 163.157, 163.159, 163.161

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.155. *Vacancies.*

If for any reason an appointed arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to the chief judge, declare the office vacant. The chief judge may fill a vacancy by

appointing a SOAH arbitrator. Objections for cause to the appointed arbitrator shall be filed in accordance with this Subchapter, §163.151(d). During the period of a vacancy, the chief judge may rule on pending matters, including dispositive motions.

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## SUBCHAPTER E. ARBITRATION PROCEEDINGS

**1 TAC §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, 163.235**

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.227. *Evidence.*

(a) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Practice and Remedies Code, §171.007, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under this Subchapter, §163.205.

§163.235. *Evidence Filed After the Hearing.*

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, all parties shall be afforded an opportunity to examine such documents or other evi-

dence. Such materials shall be served as provided in Subchapter C of this Chapter, §163.101.

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## SUBCHAPTER F. ARBITRATION ORDER

**1 TAC §§163.251, 163.253, 163.255**

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.251. *Order.*

(a) The arbitrator may enter any order consistent with state and federal law applicable to a dispute described in Subchapter B of this Chapter, §163.51.

(b) The order shall be entered no later than the 60th day after the close of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and DADS or its designee and send a copy to the parties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**TITLE 10. COMMUNITY DEVELOPMENT**  
**PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**CHAPTER 23. SINGLE FAMILY HOME PROGRAM**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, concerning Single Family HOME Program, Subchapter A, General Guidance, §23.2, Definitions; Subchapter C, Homeowner Rehabilitation Assistance, §23.32, Homeowner Rehabilitation Assistance ("HRA") Administrative Requirements; Subchapter D, Homebuyer Assistance Program, §23.41, Homebuyer Assistance ("HBA") Program Requirements, and §23.42, HBA Administrative Requirements; Subchapter F, Tenant-Based Rental Assistance Program, §23.62, Tenant-Based Rental Assistance ("TBRA") Administrative Requirements; and Subchapter G, Single Family Development Program, §23.72, Single Family Development ("SFD") Administrative Requirements, without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8424).

**REASONED JUSTIFICATION:** The purpose of amending the rules is that the Department finds that the amendments will increase efficiency and effectiveness of the Single Family HOME Program.

The Department accepted public comment between November 28, 2015, and December 28, 2015. Comments regarding the amended sections were accepted in writing and by fax. No comments were received concerning the proposed amendments.

The Board approved the final order adopting the amendments on January 28, 2016.

**SUBCHAPTER A. GENERAL GUIDANCE**  
**10 TAC §23.2**

**STATUTORY AUTHORITY:** The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

No other statutes, articles, or codes are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM**  
**10 TAC §23.32**

**STATUTORY AUTHORITY:** The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

No other statutes, articles, or codes are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM**  
**10 TAC §23.41, §23.42**

**STATUTORY AUTHORITY:** The amended sections are adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

No other statutes, articles, or codes are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

### 10 TAC §23.62

**STATUTORY AUTHORITY:** The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

No other statutes, articles, or codes are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

### 10 TAC §23.72

**STATUTORY AUTHORITY:** The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

No other statutes, articles, or codes are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

### 10 TAC §23.51, §23.52

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, concerning Single Family HOME Program, Subchapter E, Contract for Deed Program, §23.51, Contract for Deed ("CFD") Program Requirements, and §23.52, CFD Administrative Requirement, with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8430). The changes to the proposed amendment are title changes to the name of the activity under Subchapter E from Contract for Deed Conversion ("CFDC") to Contract for Deed ("CFD") Program to align with a change made during the 84th legislative session regarding the title conversion process.

**REASONED JUSTIFICATION:** The purpose of amending the rules is that the Department finds that the proposed amendments will increase efficiency and effectiveness of the Single Family HOME Program.

The Board approved the final order adopting the amendments on January 28, 2016.

The Department accepted public comment between November 28, 2015, and December 28, 2015. Comments regarding the new sections were accepted in writing and by fax. No comments were received concerning the proposed amendments.

**STATUTORY AUTHORITY:** The amended sections are adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

No other statutes, articles, or codes are affected by the amendments.

§23.51. *Contract for Deed (CFD) Program Requirements.*

(a) Eligible activities are limited to:

(1) acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) refinance with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 60 percent (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.

(e) The Department will require a first lien position.

(f) Direct Project Costs, exclusive of Match funds, are limited to:

(1) refinance, acquisition and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$78 per square foot or \$85,000, or for Households of five or more Persons the lesser of \$78 per square foot or \$90,000;

(3) replacement with an energy efficient MHU: \$75,000; and

(4) rehabilitation that is not Reconstruction: \$40,000.

(g) In addition to the Direct Project Costs allowable under subsection (d) of this section, a sum not to exceed \$5,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process; or

(2) homeowner requests for accessibility features.

(h) Project Soft Costs are limited to:

(1) acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$9,000 per housing unit;

(3) replacement with an MHU: no more than \$3,500 per housing unit; and

(4) rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project Soft Costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet §92.25 1(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows;

Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this Activity must meet the requirements of Chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

#### §23.52. *Contract for Deed (CFD) Administrative Requirements.*

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and Soft Costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(9) if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction;

(11) a title commitment to issue a title policy not older than thirty (30) days when submitted that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) in the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded contract for deed and a current payoff statement; and

(15) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned,

duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for costs being paid at closing;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation; and

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600449

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: November 27, 2015

For further information, please call: (512) 475-2975



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 165. MEDICAL RECORDS

## 22 TAC §165.6

The Texas Medical Board (Board) adopts an amendment to §165.6, concerning Medical Records Regarding an Abortion on an Unemancipated Minor, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7358). The rule will not be republished.

The amendment is made in accordance with House Bill 3994, enacted by the 84th Legislature. House Bill 3994 makes changes to the Family Code section related to notice and consent for abortions performed on minors that include specific recordkeeping requirements related to information that must be maintained in the medical records of the physician performing the abortion, necessitating the amendments that are discussed below.

The amendment to §165.6 changes language in subsection (b)(4) so that a physician who performs an abortion on an unemancipated minor during a medical emergency is required to execute an affidavit explaining the specific nature of the medical emergency that necessitated the immediate abortion and include a copy of the affidavit in the minor patient's file. Other language under subsection (b)(4) is deleted, as it was made redundant by HB 3994's changes.

Further, language is added to subsection (c) requiring a physician's duty to maintain in the minor's medical record a return receipt of the required written notice from the physician who performed an abortion on the minor under emergency circumstances without the opportunity to obtain consent, to the parents or guardians of the minor. The amendments to subsection (c) also require that if the notice was delivered "undeliverable", the physician is required to maintain a copy of the notice itself.

Finally, the amendment adds language to subsection (d) establishing specific requirements for a physician to show due diligence in determining any woman on whom the physician performs an abortion has reached the age of majority or has had the disabilities of a minority removed, and establishes the requirements of showing "due diligence", tracking the language of HB 3994.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also adopted under the authority of HB 3994, 84th Leg. (2015).

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 February 1, 2016.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §§187.35, 187.37, 187.38, 187.61, 187.86, 187.87, 187.88 and 187.89, concerning Procedural Rules, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7369). The rules will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the proposed rules at a meeting held on August 10, 2015. The stakeholder comments were incorporated into the proposed rules.

The amendments to §187.35, relating to Presentation of Proposal for Decision, revise subsection (a)'s provisions related to notice requirements, to comport with changes made to the Administrative Procedure Act by SB 1267, 84th Legislature, R.S. (2015).

The amendments to §187.37, relating to Final Decisions and Orders, revise provisions related to notice and deadline requirements in order to comport with changes made to the Administrative Procedure Act by SB 1267, 84th Legislature, R.S. (2015).

The amendments to §187.38, relating to Motions for Rehearing, revise provisions related to notice and deadline requirements in order to comport with changes made to the Administrative Procedure Act by SB 1267, 84th Legislature, R.S. (2015).

The amendments to §187.61, relating to Ancillary Proceeding, clarify the Medical Board meets the exception in §2001.054(c-1) of Texas Government Code related to filing requirements for certain proceedings.

The amendments to §187.86, relating to Scope, revise language in order to correct a reference to the title of 28 TAC §21.5010.

The amendments to §187.87, relating to Definitions, revise definitions for a facility-based physician to include an assistant surgeon, in accordance with changes made by SB 481, 84th Legislature, R.S. (2015). Other changes are made to correct references to the title of 28 TAC §21.5010.

The amendment to §187.88, relating to Complaint Process and Resolution, represents general cleanup to the rule.

The amendments to §187.89, relating to Notice of Availability of Mandatory Mediation, revise language related to the notice required in a billing statement for certain facility-based physicians, in accordance with changes made by SB 481 84th Legislature, Regular Session (2015).

### Summary of Written Comments Received

The Board received one public written comment from the Texas Medical Association (TMA). No one appeared to testify at the public hearing held on December 4, 2015, regarding the proposed amendments to Chapter 187.

### TMA Comment:

TMA commented on proposed amendments made to §§187.86 - 187.89. TMA expressed general support and no opposition to the proposed amendments. However, TMA expressed concerns with existing rule language - not proposed for amendment - related to the definitions of "facility" and "bad faith mediation" and recommended that certain changes be adopted related to such existing language.

### Board Response:

The Board appreciates TMA's comments and its general support expressed for the adopted amendments. The Board declines to adopt the amendments with TMA's recommended changes, however, as such changes would represent substantive rule amendments requiring public notice and comment. The Board will continue to review and consider the issues brought forth by TMA regarding the rules under §§187.86 - 187.89.

## SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

### 22 TAC §§187.35, 187.37, 187.38

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further authorized by SB 1267 and SB 481, 84th Legislature, Regular Session (2015).

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 February 1, 2016.

TRD-201600452

Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016

## SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

### 22 TAC §187.61

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further authorized by SB 1267 and SB 481, 84th Legislature, Regular Session (2015).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. PROCEDURES RELATED TO OUT-OF-NETWORK HEALTH BENEFIT CLAIM DISPUTE RESOLUTION

### 22 TAC §§187.86 - 187.89

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further authorized by SB 1267 and SB 481, 84th Legislature, Regular Session (2015).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Executive Director

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## CHAPTER 189. COMPLIANCE PROGRAM

### 22 TAC §189.16

The Texas Medical Board (Board) adopts new §189.16, concerning Monitoring, Proctoring, or Supervising Physician/Professional's Recommendation for Competency Assessment, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7373). The rule will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the proposed rule at a meeting held on August 10, 2015. The stakeholder comments were incorporated into the proposed rules.

The new rule provides that a monitoring, proctoring, or supervising physician/professional ("monitor") may recommend that a probationer complete a competency evaluation, requires that such a recommendation be reviewed and approved by the Disciplinary Process and Review Committee (DPRC) prior to enforcing the recommendation, and sets forth a process that will apply in the cases in which the DPRC Chair approves such a recommendation. The rule provides that the Board may take further appropriate action based upon the results of the competency evaluation or the probationer's failure to comply with procedures related to the competency evaluation.

### SUMMARY OF WRITTEN COMMENTS RECEIVED

The Board received public written comments from the Texas Medical Association ("TMA") and an individual. No one appeared to testify at the public hearing held on December 4, 2015, regarding §189.16.

TMA Comment:

TMA opposed the new rule, asserting that prior to a competency evaluation being required, a probationer should be afforded an Informal Settlement Conference/Show Compliance ("ISC") procedure on the issue of whether a probationer should be required to complete such a competency evaluation, and if not an ISC, at a minimum an opportunity to respond to the chart monitor's recommendation for a competency evaluation. TMA also recommended making changes to the title so that it references a "competency evaluation" rather than a competency "assessment", and asserts that the references to the "monitor" made in §189.16 are inconsistent with a definition of "monitoring physician" found under §189.2(15).

Board Response:

The Board agrees that a probationer should have an opportunity to respond to the chart monitor's recommendations made based upon a review of the probationer's medical records and/or practice. This is indeed the process in place for all chart monitoring recommendations made. All probationers are afforded the opportunity to respond to a chart monitor's specific recommendations made during each reporting cycle, and this process will be applied to the Disciplinary Process and Review Committee Chair's review of a chart monitor's recommendation that a probationer complete a competency evaluation. The DPRC Chair will have access to, along with all other materials related to the chart monitor's recommendation, the probationer's responses made to the recommendation, and will take that information into consideration when determining whether the chart monitor's recommendation should be approved.

The Board disagrees that an ISC is warranted for such an issue, however, and believes that a review completed by the DPRC Chair will provide appropriate due process to the affected probationer on the issue of whether a competency evaluation should be completed, as the DPRC Chair will have access to all relevant documents and the probationer's responses made to the chart monitor's recommendation, and therefore will have a complete understanding of all the relevant circumstances and will be able to make a well-informed decision.

The Board also disagrees that the rule's title referring to a competency "assessment" rather than an evaluation will lead to confusion. The two terms are interchangeable and synonymous.

The Board further disagrees that it is inconsistent to include under the rule non-physician professionals approved by the Board to act as monitors for probationers in addition to monitoring physicians. Probationers, which include other licensee-types than physicians, may be monitored by other types of professionals approved by the Board to act as monitors, depending on the nature of the monitoring. Such non-physician professionals will be in certain cases qualified to make such recommendations for a competency evaluation. Therefore, using only the term "monitoring physician" under the rule would result in an erroneous exclusion of professionals other than physicians who act as monitors for the Board from being authorized to make recommendations for competency evaluations, and would hamper the Board's ability to adequately and timely protect the public when faced with a situation in which a non-physician probationer shows possible signs of poor competency in his or her practice area. Therefore, the Board declines to adopt the amendments with the recommended changes.

Individual Comment:

The individual opposed the rule, claiming that the rule did not afford a probationer the opportunity to respond to the chart monitor's recommendation prior to the DPRC Chair review and that due process requires at a minimum an ISC on the issue. The individual further asserted that the "potential competency evaluation programs are typically subjective in their competency assessments and there is also no appeal available from their evaluations," and that respondents in board disciplinary cases will be less likely to agree to such a process as a result of the rule.

Board Response:

The Board disagrees with the comments. First, all probationers are afforded the opportunity to respond to a chart monitor's specific recommendations made during each reporting cycle, and this same process will be applied to the Disciplinary Process and Review Committee Chair's review of a chart monitor's recommendation that a probationer complete a competency evaluation. The DPRC Chair will have access to, along with all other materials related to the chart monitor's recommendation, the probationer's responses made to the recommendation, and will take that information into consideration when determining whether the chart monitor's recommendation should be approved.

The Board disagrees that an ISC is warranted for such an issue and believes that a review completed by the DPRC Chair will provide appropriate due process to the affected probationer on the issue of whether a competency evaluation should be completed, as the DPRC Chair will have access to all relevant documents, including the probationer's responses made to the chart monitor's recommendation, and therefore will have a complete understanding of all the relevant circumstances and will be able to make a well-informed decision.

The Board disagrees that this rule will result in respondents being less likely to agree to a chart monitoring term. In the Board's experience, chart monitoring recommendations for competency evaluations are not commonly made. However, such recommendations, when made, require that the Board put into place a procedure that will allow the Board to adequately protect the public while providing probationers appropriate due process on the issue so as to prevent unwarranted evaluations from being required.

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The new rule is also adopted under the authority of Texas Occupations Code Chapter 164, including: §§164.001; 164.002; 164.010; 164.059; and 164.101.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016

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## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 341. LICENSE RENEWAL

#### 22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.3, regarding Qualifying Continuing Competence Activities, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8719).

The amendment to 22 TAC §341.3 corrects a discrepancy between Board rule and Board adopted policy for approving a specialty examination in paragraph (5)(A), allows the Board to consider partial credit for mentoring a resident/fellow who rotates through several facilities with separate mentors in paragraph (5)(D), and adds credit for item writers for American Board of Physical Therapy Specialties (ABPTS) examinations in paragraph (6)(D).

No comments were received regarding the proposed changes.

Statutory authority: The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201600450

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: February 21, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 305-6900

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#### 22 TAC §341.6

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.6, regarding License Restoration, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8720).

The amendment to 22 TAC §341.6 adds military service member and military veterans as qualifying for expediting the restoration of a license per SB 1307, which passed during the 84th Legislature (2015).

No comments were received regarding the proposed changes.

Statutory Authority: The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201600451

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

##### SUBCHAPTER L. PERMANENCY PLANNING

#### 40 TAC §700.1210, §700.1212

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §700.1210 and §700.1212 without changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7991).

The justification for the new rules is to implement Senate Bill (SB) 206, enacted during the 84th Regular Session of the Texas Legislature, made many changes to Texas law in order to improve casework, streamline and clarify DFPS' statute, and give the agency flexibility to implement changes in progress through CPS Transformation. SB 206 repealed certain prescriptive statutes in order to allow DFPS and its external partners to implement best practice amid changing circumstances and current business need. Of relevance to this rule, the Legislature repealed portions of §263.009 of the Texas Family Code, which went into relatively extensive detail regarding the frequency and conduct of permanency planning meetings for children in the conservatorship of the agency. Permanency planning meetings are multidisciplinary gatherings that target the achievement of a permanent exit from DFPS' conservatorship. Prior to being amended by SB 206, §263.009 repeated verbatim DFPS policy regarding the frequency of permanency planning meetings. Rather than continue at the same level of prescriptiveness, the legislature directed the Executive Commissioner, on DFPS' behalf, to adopt in rule a schedule for the meetings "that is designed to allow the child to exit the managing conservatorship of the department safely and as soon as possible and be placed with an appropriate adult caregiver who will permanently assume legal responsibility for the child."

DFPS worked with stakeholders to develop a rule that reflects events or trigger points that would generally make a permanency planning meeting appropriate. Rather than adopting a schedule that would cause staff to "work to deadline" rather than the ul-

timate goals of the case, the rule recognizes events that may necessitate a permanency planning meeting--while also recognizing that DFPS must implement the law within existing agency resources.

New §700.1210: (1) defines "permanency planning meeting"; (2) specifies the purposes of the meetings, which is ultimately to identify the child's permanency goal and determine what is necessary to achieving it; (3) clarifies that except as otherwise permitted in law, a child's goal should involve a permanently responsible person or family; and (4) reiterates that permanency planning meetings are governed by §263.009, Texas Family Code.

New §700.1212 provides that, to the greatest extent possible, permanency planning meetings should be conducted as necessary to achieve safe and timely permanency, including at the following points: (1) to develop the initial family plan of service and initial visitation plan; (2) prior to scheduled permanency hearings; (3) following a significant update to the child's permanency goal; and (4) following a final order and as necessary for a youth who is 16 or over and has a permanency goal of another planned permanent living arrangement (which does not involve a legally responsible person or family).

The sections will function by clarifying the goals and timing of the permanency planning process in a fashion that affords sufficient flexibility to adjust for current understanding of best practice.

No comments were received regarding adoption of the sections.

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement §263.009 of the Texas Family Code, as amended by SB 206, 84th Texas Legislature.

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 February 1, 2016.

TRD-201600408

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-3238



## CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.273, 745.351, 745.8605, 745.8933, 745.8951; the repeal of §745.8920 and §745.9015;

and new §§745.9025 - 745.9029, without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7992).

The justification of the amendments, repeals and new sections are to implement Senate Bills (SB) 1307 and 807 and House Bill (HB) 2070 that were passed by the 84th Texas Legislature in 2015.

Licensing is amending Subchapters D, Application Process; L, Remedial Actions; and N, Administrator Licensing, to clarify that a general residential operation that applies to provide trafficking victim services is exempt from any public notice and hearing requirements (in accordance with HB 2070, which added Human Resources Code (HRC), §42.0462), including: (1) requiring a general residential operation that is exempt from the public notice and hearing requirements during the application process to begin providing trafficking victim services during the initial permit period before being eligible for a full permit; and (2) allowing remedial action to be taken against a general residential operation if the operation was exempt from the public notice and hearing requirements during the application process, but the operation never provides or ceases to provide trafficking victim services. (Remedial action would not be necessary if the operation surrendered its permit or withdrew its application, as applicable, so that it could satisfy the public hearing requirements that apply to operations that do not provide trafficking victim services.)

Licensing is repealing definitions in Subchapter A, Precedence and Definitions, and rules in Subchapter N that relate to applicants for an administrator's license who have a military background, which includes military members, military veterans, and military spouses; and proposing a new Division 5 in Subchapter N, Military Members, Military Spouses, and Military Veterans, so that all rules relating to applicants for an administrator's license who have a military background are in one place. The new sections will (in accordance with SB 1307 and SB 807, which amended Chapter 55 of the Occupations Code) do the following: (1) redefine "military member," "military veteran", and "military spouse"; (2) require DFPS to waive examination and application fees for an applicant who is a military member, military veteran, or military spouse whose military service, training, or education generally meets all of the requirements for the license or who presently holds a license in another jurisdiction with requirements that are substantially equivalent to those in Texas; (3) exempt military members, including those living in Texas, from a penalty for failing to renew a license in a timely manner because the individual was serving as a military member; (4) give military members two additional years to complete the renewal requirements for an administrator's license; (5) provide a military member or military veteran an alternative licensing application process for an administrator's license; and (6) provide a military member, military veteran, or military spouse an expedited licensing application process for an administrator's license.

A summary of the changes follows:

Section 745.21 is amended to remove the definitions of persons with a military background so that those definitions can be placed in a new Division 5 in Subchapter N.

Section 745.273 is amended to exempt a general residential operation that applies to provide trafficking victim services from having to comply with public notice and hearing requirements. HRC §42.0462 (added by HB 2070) provides this exemption.

Section 745.351 is amended to require a general residential operation with an exemption from public notice and hearing require-

ments to provide trafficking victim services during the initial permit period before it is eligible for a full permit.

Section 745.8605 is amended to allow remedial action to be taken against a general residential operation if the operation was exempt from the public notice and hearing requirements during the application process and trafficking victim services were never provided or are no longer being provided.

Section 745.8920 is repealed because the content of the rule is being moved to §745.9026 in new Division 5 in Subchapter N.

Section 745.8933 is amended to delete the content in this rule that pertains to applicants for an administrator's license with a military background and moved to §745.9027 in new Division 5 in Subchapter N.

Section 745.8951 is amended to delete the content in this rule that pertains to applicants for an administrator's license with a military background because the content is being moved to §745.9028 in new Division 5 in Subchapter N.

Section 745.9015 is repealed because the content of the rule is being moved to §745.9029 in new Division 5 in Subchapter N.

New §745.9025 defines a "military member," "military spouse," and "military veteran" to be consistent with Occupations Code §55.001 as amended by SB 1307.

New §745.9026 incorporates content from §745.8920, which is being repealed. In accordance with Occupations Code §55.004 and §55.009 (as amended by SB 807), this rule also: (1) provides a military member or military veteran an alternative licensing application process for an administrator's license; and (2) waives examination and application fees for an applicant who is a military member, military veteran, or military spouse whose military service, training, or education generally meets all of the requirements for the license or who presently holds a license in another jurisdiction with requirements that are substantially equivalent to those in Texas.

New §745.9027 incorporates and slightly modifies the content from current §745.8933 to provide consistency in the type of documentation a military member, military veteran, or military spouse would need to submit in order to receive special consideration during the application process.

New §745.9028 incorporates content from current §745.8951 that expedites the application process for military spouses. This rule also expedites the application process for all military members and military veterans to be consistent with Occupations Code §55.005 as amended by SB 1307.

New §745.9029 incorporates content from §745.9015, which is being repealed. In accordance with Occupations Code §55.002 and §55.003 (as amended by SB 1307), this rule also: (1) exempts military members, including those living in Texas, from a penalty for failing to renew an administrator's license in a timely manner because the individual was serving as a military member; and (2) gives military members two additional years of time to complete the renewal requirements for an administrator's license.

The sections will function by being in compliance with Occupations Code, Chapter 55 and HRC, §42.0462 and §43.005.

No comments were received regarding adoption of the sections.

## SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

## DIVISION 3. DEFINITIONS FOR LICENSING

### 40 TAC §745.21

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

Department of Family and Protective Services

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## SUBCHAPTER D. APPLICATION PROCESS

## DIVISION 4. PUBLIC NOTICE AND HEARING

## REQUIREMENTS FOR RESIDENTIAL

## CHILD-CARE OPERATIONS

### 40 TAC §745.273

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rule-making authority for Chapter 42, HRC.

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## DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

### 40 TAC §745.351

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rule-making authority for Chapter 42, HRC.

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## SUBCHAPTER L. REMEDIAL ACTIONS DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

### 40 TAC §745.8605

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rule-making authority for Chapter 42, HRC.

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## SUBCHAPTER N. ADMINISTRATOR LICENSING

### DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

#### 40 TAC §745.8920

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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## DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

### 40 TAC §745.8933

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

### 40 TAC §745.8951

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

### 40 TAC §745.9015

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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## DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

### 40 TAC §§745.9025 - 745.9029

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

##### SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

###### 43 TAC §§9.81, 9.83, 9.85, 9.87, 9.89

The Texas Department of Transportation (department) adopts amendments to §9.81, Definitions, §9.83, Notice and Letter of Interest, §9.85, Evaluation, §9.87, Selection, and §9.89, Qualification Requirements for Appraisers, concerning Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services. The amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89 are adopted without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8011) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

The department adopts changes to the rules for real estate appraisal service and right of way acquisition service providers to address the increasing need for professionalism, timeliness, cost effectiveness, and transparency in the department's contracting with professional real estate appraisers and right of way acquisition service providers.

Amendments to §9.81, Definitions, modify and clarify the definition of a professional real estate appraiser by deleting the term "licensed" and adding "certified by the Texas Appraiser Licensing and Certification Board." Real estate appraisers are regulated in

Texas under the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103. A state certification carries a higher level of appraisal authority than a state license. A definition of "department-certified appraiser" has been added to clarify that in addition to carrying a state certification, an appraiser must also qualify for a department certification which requires additional experience beyond the issuance of the state certification. Definitions have also been added to distinguish the appraisal authority of a state-certified general appraiser and a state-certified residential appraiser. The general appraisal state certification carries the authority to appraise all types of real property, while the residential appraisal state certification carries the authority to appraise only 1 - 4 unit residential properties.

Amendments to §9.83, Notice and Letter of Intent, and §9.85, Evaluation, replace the language referencing a "precertified" appraiser with "department-certified" appraiser. This provides clarity in the difference in a state certification and department certification. Section 9.85(c) expressly provides that to be selected for a contract an appraiser must be a department-certified appraiser.

Amendments to §9.87, Selection, increase the total right of way acquisition service provider contract amount from \$2 million to \$4 million for a contract issued to provide services in a single district of the department. Contracts for right of way acquisition service providers do not carry a guarantee of work, but the artificial \$2 million cap does not provide the capacity for providers to complete work authorizations on complex right of way projects, particularly with the increasing construction letting schedule throughout the state. The increase will provide a more timely and efficient business process as opposed to having to use multiple service providers on a single project in order to meet the constraints of the obsolete \$2 million contract cap. The amendments also reflect the current style of expressing dollar amounts of more than \$1 million.

Amendments to §9.89, Qualification Requirements for Appraisers, delete, add, and clarify language for requirements that must be met by eligible individual real estate appraisers. Language was deleted that specified types of properties that demonstrate experience as it is not a comprehensive list and creates ambiguity. New language has been added that provides flexibility in the list of property types that can be used for qualifying experience. Again, the language referencing a "precertified" appraiser has been replaced by "department-certified" appraiser. The term "licensed" appraiser was deleted as it is a level of appraisal authority substantially below the state certification that is needed to perform complex appraisal assignment for parcels subject to eminent domain. Additional clarifying language has been added that specifies that an appraiser's experience for department certification must be demonstrated in a period after state certification is awarded. Language has been added that specifically states that a copy of the appraiser's state certification must be included in the application for department certification. Language was deleted in reference to a precertification being required every five years and has been replaced with language that will make the termination of the department certification the same date as the termination of the appraiser's individual state certification. Having the same date for the state certification and the department certification will eliminate confusion and provide administrative efficiency to both the regulated appraisal industry and the department.

#### COMMENTS

No comments were received regarding the amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, and Occupations Code, Chapter 1103.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 30. AVIATION

### SUBCHAPTER F. METEOROLOGICAL EVALUATION TOWERS

#### 43 TAC §§30.501 - 30.503

The Texas Department of Transportation (department) adopts new §§30.501 - 30.503, concerning Meteorological Evaluation Towers. The new sections are adopted without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8015) and will not be republished.

#### EXPLANATION OF ADOPTED NEW SECTIONS

The increasing prevalence of meteorological evaluation towers (METs), which are used to measure wind speed and direction to identify locations for future wind turbines, has caused concern for the National Transportation Safety Board and the Federal Aviation Administration. Senate Bill 505, 84th Legislature, Regular Session, added new Transportation Code, §21.071, which establishes painting and marking requirements for certain METs, and requires the department to adopt rules requiring a person who owns, operates, or erects a MET to provide notice to the department of the existence of or intent to erect a tower and to register the tower with the department. The department is developing a web-based notice, registration, and reporting tool that will be available to owners and operators of METs, as well as other interested parties that need to know the location of such towers.

New Subchapter F is titled "Meteorological Evaluation Towers" to accurately reflect the subject matter of the subchapter.

New §30.501, Purpose, describes the purpose of the subchapter, which is to set out the procedures for notice and registration of METs in accordance with Transportation Code, §21.071.

New §30.502, Definitions, defines various terms used in the new subchapter, which are consistent with Transportation Code, §21.071.

New §30.503, Notice and Registration, describes the method, timeframe, and type of information required for providing notice of the intent to erect a MET, as well as registration of such a tower.

New subsection (a) provides that a person who intends to erect a MET shall provide notice of that intention to the department by submitting the appropriate form through the department's Internet website. The notice must be submitted no later than the 30th day before the day that erection of the tower begins. This notification deadline will allow the department to disseminate pertinent information through the web-based tool prior to the construction of the tower.

New subsection (b) sets out the information required to complete the notice form, including: the name, address, and contact information of the owner or operator of the MET; the proposed location of the MET; the proposed date of construction; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (c) provides that a person who owns or operates a MET shall register the tower with the department by submitting the appropriate form through the department's Internet website. The registration must be completed before the 30th day after the day that erection of the tower begins or February 29, 2016, whichever is later. These registration deadlines will allow the department to disseminate pertinent information related to existing towers through the web-based tool in a timely manner.

New subsection (d) sets out the information required to complete the registration form, including: the name, address, and contact information of the owner or operator of the MET; the location of the MET; for certain METs, an affirmation that the tower complies with the painting and marking requirements of Transportation Code, §21.071; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (e) provides that a person who is responsible for filing a form required by subsection (a) or (c) shall amend the filed information as necessary to maintain accuracy of that information.

#### COMMENTS

The department received two comments regarding proposed §§30.501 - 30.503.

Comment: Major Steve Robertson, Texas Wing Director of Emergency Services, Civil Air Patrol, commented that while the notification requirement and posting of the coordinates of any newly erected MET will aid the Civil Air Patrol's mission, it is the provision for the painting and marking of METs that will most enhance the safety of any aircraft flying in the vicinity of these towers.

Response: The department appreciates the support of the Civil Air Patrol, Texas Wing, and agrees that the painting and marking of METs will offer a critical safety enhancement. The MET registration form will include an affirmation that METs at least 50 feet but not more than 200 feet in height above ground level comply with the requirements of Transportation Code, §21.071;

however, any further enforcement of MET markings falls outside of the scope of the department's authority.

Comment: Yasmina Platt, Central Southwest Regional Manager, Aircraft Owners and Pilots Association (AOPA), expressed appreciation for the legislation and adoption of rules to address the increasing safety concerns METs have created for aviation operators and pilots over the last few years. AOPA commented that, in addition to the department's online mapping tool, it would be beneficial for pilots to be able to consume the data in a format directly compatible with respective cockpit equipment and navigation software. To that end, AOPA suggested that the notice form also include any other information that flight planning providers and cockpit equipment providers would require to incorporate MET information into their respective databases. A format identical to that of the Federal Aviation Administration (FAA) digital obstacle file (DOF) was requested. AOPA also cited FAA Form 7460 "Notice of Proposed Construction or Alteration" as a good example for the registration form and, in addition to the information currently proposed to be collected, requested that the department include the proposed duration of the structure's location. Finally, AOPA proposed adding an aeronautical chart background to the web mapping application.

Response: The department appreciates the AOPA's support and agrees with most of the comments. The MET notice and registration system has been programmed to provide the data in a web map as well as in the FAA's DOF format. The goal is for pilots to be able to use the data in navigation systems seamlessly. The department believes that inclusion of information concerning the proposed duration of the structure's location would be redundant, as the presence of the MET in the database is an indication of the structure's continued presence on the ground. The use of aeronautical charts as a background for the web mapping application would be beneficial; however, the time constraints asso-

ciated with developing and activating the MET system, and the fact that the Texas Aeronautical Chart does not yet exist in digital form, have prevented the department from including this option. The department will consider this suggestion for future improvements to the system.

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §21.071, which requires the department to adopt rules related to the notice and registration of METs.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §21.071.

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